

**Brighton Bank**  
**Online Business Banking**  
**Remote Deposit Services Agreement**

In consideration of the promises contained in this Agreement (the "Agreement"), Brighton Bank (the "Bank") and \_\_\_\_\_ (The "Customer") agree as follows:

**1. Purpose and Scope**

The customer wishes to remotely deposit checks in accordance with the terms of this Agreement, and the Bank is willing to provide the Customer equipment and software to perform this action.

**2. Authorized Account(s)**

By accepting this agreement and the use of this service, you acknowledge and agree the accounts listed on the related application are current and in good standing with Brighton Bank. You agree accounts listed on the application and any accounts added in the future are bound by this agreement.

**3. Service**

The Bank agrees to supply the Customer with the Remote Deposit Service including the scanner equipment and software to image and transmit checks electronically. This service does not provide for a computer to run the software or an internet connection to transmit the images. These items are the responsibility of the Customer to have or obtain separately. Both parties agree to the provisions of this agreement for the Service.

**4. License**

Subject to the terms and conditions of this agreement, the Bank hereby grants the Customer a non-exclusive, non-transferable license to: (a) lease the software and equipment for the Remote Deposit product, solely for the Customer's own business operations; (b) use any printed material associated with the Remote Deposit Product in support of their authorized use of the software and equipment; (c) copy any or all of the software for archival and/or backup purposes only.

**5. Warranty**

The Bank warrants that, upon delivery of the product to the Customer, the software and equipment provided will perform to current Bank standards of Remote Deposit. The Bank reserves the right to repair or replace any or all parts of the software and/or equipment that are not performing properly at delivery. The Bank will not be responsible in any manner or capacity for deficiency caused in whole or part by inaccurate or otherwise deficient data programs, equipment or communication facilities provided by Customer or third parties other than the Bank. Customer shall bear the entire risk of loss, theft, damage or destruction of Equipment from the date of installation until return shipment to the Bank. 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.

**6. Term and Termination**

This agreement is effective from the date of execution and shall continue thereafter until terminated by either party. Termination must be done in writing, with 30 days advanced notice, or will occur with the closing of the deposit accounts related to the product. Furthermore, the Bank may terminate this contract with 10 days written notice if the termination is the result of the Customer's failure to pay the Bank any amount due to the Bank under this agreement, or with immediate written notice if the bank discovers any willful misconduct (including bad checks or fraudulent activities) on the part of the Customer, their agents or vendors. Any termination of the agreement will not affect obligations that occurred before such termination. This includes the Bank's obligation to process remotely deposited checks and the Customer's obligation of any fees due from this service. Customer will promptly return all equipment in working order back to any of The Banks offices upon termination.

## **7. 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 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.

## **8. Indemnity**

Customer will indemnify and hold the Bank, its licensors and providers of the Services, and their respective directors, officers, employees and agents, harmless against any and all claims, causes of action, damages, expenses (including reasonable attorneys' fees and other legal expenses), liabilities and other losses to the extent that they result from or arise out of (i) the breach of contract (including without limitation breach of any provision, representation or warranty), negligence or willful misconduct (whether by act or omission) of Customer, its customers, or any third party on behalf of Customer, including without limitation (a) any unauthorized modifications or changes to the Software by Customer or any third party on behalf of Customer, (b) any failure by Customer to prevent the loss or theft of a Check or to prevent a Check, digitized image of a Check, or Electronic Item from being presented for payment more than once, (c) any failure by Customer to properly void a Check, (d) any misuse of the Program by Customer, or (e) the failure by Customer to comply with applicable state and federal laws and regulations; (ii) any claim that the unavailability of an original of a Check has caused damage to a third party; (iii) the return of an Electronic Item, even if such Electronic Item has been initially paid by the Payer Financial Institution, for any reason other than a breach by The Bank of its duties under this Agreement; (iv) any act or omission of The Bank that is in accordance with this Agreement or instructions from Customer; (v) the act, failure to act or the delay in acting by any financial institution other than The Bank; or (vi) actions by third parties, such as the introduction of a virus, that delay, alter or corrupt the transmission of an Electronic Item to The Bank. This provision shall survive termination of this Agreement.

## **9. Cost/Prices**

Customer agrees to pay timely any fees incurred from the service. Cost/Prices are listed on Schedule A.

## **10. Notices**

All notices permitted or required under this Agreement will be in writing and will be deemed given upon actual delivery. Any notice will be addressed to the party as follows:

If to Brighton Bank: Brighton Bank  
c/o: Administration Department  
93 West 3300 South  
Salt Lake City, Utah 84115  
Fax Number: 801-487-5905

If to Customer: The address or facsimile of any account the Customer uses or used to transmit remote deposits.

## 11. Customer Responsibility

- (i) Customer will maintain an Account at the Bank for the receipt of deposits of digitized images of Checks, in accordance with applicable Account Agreements.
- (ii) Customer will use a compatible internet browser. The customer understands that any errors or failures caused by their computer, browser, viruses, or related problems associated with the use of the online system is not the responsibility of Brighton Bank.
- (iii) Customer may use only The Bank-approved Equipment in connection with the Program. Unless otherwise provided in an addendum to this Agreement or in a separate agreement, Customer, and not the Bank, shall be responsible for ordering, obtaining and maintaining all Equipment. Customer will be responsible for maintaining any interface software used in connection with the Equipment.
- (iv) Customer will use the Equipment and the Software, including the entering, processing and transmittal of items, in accordance with the Documentation. With limiting the foregoing, Customer will comply with all security procedures described in the Documentation, and will not bypass, override or disable any security mechanisms in the Equipment or Software.
- (v) Customer represents and warrants that with respect to each Check and corresponding Electronic Item: (a) Customer is entitled to enforce the Check and Electronic Item; (b) Customer has obtained any necessary authorization from the Drawer to digitize the Check and treat Drawer's signature on the Electronic Item as an original signature for all purposes (c) all signatures on the Check and Electronic Item are authentic and authorized; (d) to the Customer's knowledge the Check is not a counterfeit item; (e) the Check and Electronic Item have not been altered; (f) the Electronic Item is a digitized image of the Check and, to the best of Customer's knowledge, accurately represents all of the information on the front and back of the Check as of the time the Check was converted to an Electronic Item; (g) to the Customer's knowledge the Check and Electronic Item are not subject to a defense or claim in recoupment of any party that can be asserted against Customer; (h) Customer has no knowledge of any insolvency proceeding commenced with respect to Customer, or in case of an unaccepted Check, the Drawer; (i) any returned Electronic Item is enforceable against Customer and the Drawer of the Check; (j) the check item is drawn on a US financial institution; and (k) all transfer and presentment warranties made under applicable law and the Account Agreement.
- (vi) Customer will inspect and verify the quality of images daily, and ensure the Equipment is clean and operating properly and that Check images when scanned are legible for all posting and clearing purposes.
- (vii) Customer will be responsible for training its employees in the use of the Program.

- (viii) Customer will ensure that neither the Check, nor any Electronic Item or other digitized image of the Check, will be presented for payment such that an endorser, depository bank, Payer Financial Institution, or the Drawer will be asked to make a payment twice with respect to the Check, including without limitation by placing such restrictive endorsement on Checks, or voiding Checks, as The Bank may reasonably require.
- (ix) Customer will endorse all checks to be deposited with their endorsement stamp and inspect deposit to make sure the "franking" is printing properly on the deposited checks. Customer will retain each Check which has been converted to a digital image in a safe and secure environment for a reasonable period of time, but in no event fewer than 45 days after such Check has been digitized and processed. Customer will promptly provide any retained Check to the Bank as requested to aid in the clearing and collection process or to resolve claims by third parties with respect to any Check. Customer will use a commercially reasonable method to destroy Checks after the Customer's retention period has expired.
- (x) Customer will retain all information about its digitizing of Checks as created by the Software for no less than seven (7) days. In the event of lost, mistaken, incomplete or unusable Electronic Images, or in the event of claims of fraud, alteration, counterfeit or otherwise, Customer shall cooperate fully with The Bank in providing information, including access to such records.
- (xi) In case of any data breach due to the improper storage or theft of deposited checks the customer is responsible to notify the Bank and any customers whose information was compromised as a result of the data breach.
- (xii) Customer agrees not to use the service to scan and deposit (1)Checks drawn on a financial institution located outside of the United States of America, (2)Savings Bonds, (3)Checks payable to any person or entities other than you, (4)Third Party, i.e., any item made payable to another party and then endorsed over to you by such party, (5)Checks purported to be a lottery or prize winning,(6) checks or items dated more than six (6) months prior to the date of deposit, If any of these items are scanned for deposit, the Bank may reject the items and reserve the right to suspend or terminate your use of the service.

## **12. Bank Responsibility**

- (i) The Bank will deliver to Customer, or otherwise provide access to, the Software and Equipment.
- (ii) The Bank will provide installation and training support as reasonably required for Customer's implementation of the Program. Any onsite installation or training support outside the County of Salt Lake, Utah shall be on such terms and conditions as the parties agree, including reimbursement for The Bank's reasonable travel costs.
- (iii) The Bank will provide maintenance and support for the Software as reasonably necessary to permit Customer's processing of Checks through the Program. Such maintenance and support shall include; corrections, work around and bug fixes; such modifications, enhancements and updates as The Bank's elects to make generally available to its customers without additional license fees; and telephone support to Customer during The Bank's regular business hours.
- (iv) The Bank will accept for deposit to the designated Account(s) digitized images of Checks that are transmitted to The Bank in compliance with this Agreement. Digitized images shall be deemed received upon successful receipt of the transmission of such images that are complete, usable, and adhere to the data specifications set forth in the Documentation. If the digitized images are not complete, are not useable,

or do not adhere to such data specifications, the images may not be processed by The Bank or its agents, in which event Customer's deposit will be adjusted and notification will be provided.

- (v) The Bank will provide Customer an e-mail notification of Customer's transmission of digitized images as outlined in the Documentation.
- (vi) Customer's digitized images will be processed after The Bank has received Customer's transmission of the digitized images. The Bank will use commercially reasonable efforts to present items for collection. Unless The Bank notifies Customer otherwise, The Bank will provide same day credit to the Account for all items transmitted by Customer and received by The Bank in accordance with the requirements of this Agreement and the Documentation, and within the timelines established by The Bank. (See Schedule B)
- (vii) If a Payer Financial Institution returns an item to The Bank unpaid, The Bank will charge the Account for such returned item, and may either (i) return the item to Customer, or (ii) re-present it to the Payer Financial Institution before returning it to the Customer. If a Payer Financial Institution or other third party makes a claim against The Bank or seeks a re-credit with respect to any Electronic Item, The Bank may provisionally freeze or hold aside a like amount in the Account pending investigation and resolution of the claim.
- (viii) The Bank will make available a telephone number for Payer Financial Institutions and collecting banks to call during The Bank's regular business hours, for questions regarding the Program or particular Electronic Items. All assistance will be provided in the English language.
- (ix) The Bank may suspend immediately the Customer Services or the processing of any Electronic Item if The Bank has reason to believe that there has been a breach in the security of the Program, fraud involving Customer's Account, or any uncertainty as to the authorization or accuracy of Electronic Items. The Bank reserves the right at any time to process Electronic Items on a collection basis.

**The Bank may at its sole discretion conduct an on-site inspection, at any time and from time to time, of the customer's place of business to ensure compliance with the provisions of the Agreement.**

### **13. Compliance with Laws.**

Customer shall comply with all laws, rules, and regulations applicable to Customer, to the business and operation of Customer, and to the Remote Deposit Capture Services, including, without limitation, Regulation CC, the Uniform Commercial Code and any rules established by an image exchange network through which items are processed pursuant to this Agreement. Customer further agrees that it shall have the responsibility to fulfill any compliance requirement or obligation that The Bank and/or Customer may have with respect to the Remote Deposit Capture Services under all applicable U.S. federal and state laws, regulations, and rulings, including sanction laws administered by the Office of Foreign Assets Control, and other requirements relating to anti-money laundering, including but not limited to, the Federal Bank Secrecy Act, the USA Patriot Act and any regulations of the U.S. Treasury Department to implement such Acts, as amended from time to time.

### **14. Unlawful Internet Gambling Transactions Prohibited.**

If you are a commercial customer, you certify that you are not now engaged in, and during the life of this Agreement will not engage in, any activity or business that is unlawful under the Unlawful Internet Gambling Enforcement Act of 2006, 31 USC 5361, et seq, (the "UIGEA"). You may not use your Account or any other service we offer to receive any funds, transfer, credit, instrument or proceeds that arise out of business that is unlawful under the UIGEA. You agree that if anyone asks us to process a transaction that we believe is restricted under the UIGEA,

we may block the transaction and take any other action we deem to be reasonable under the UIGEA and this Agreement.

#### **15. Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the United States, when applicable, and otherwise in accordance with the laws of the State of Utah.

#### **16. Changes to this Agreement**

We reserve the right to revise this agreement from time to time. The most current version of this agreement will govern our interpretation in the event of a dispute. If any material changes or revisions are made to this agreement, a notification will be sent to you via the email address associated with your Remote Deposit account. You may also access the most recent version at <https://www.brightonbank.com/disclosures.php>. By continuing to access or use the service after those changes become effective, you agree to be bound by the revised service agreement.

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Schedule A

REMOTE DEPOSIT PRICING

ONE TIME SET-UP FEE	\$100.00
HARDWARE LEASE & SOFTWARE LICENSE LEASE	**\$75.00
PER CHECK ITEM PROCESSING (AFTER 1ST 100 ITEMS/MONTH)	\$.15

ADDITIONAL SET

2ND HARDWARE LEASE & SOFTWARE LICENSE LEASE	**\$50.00
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NOTE: *Monthly Service charge and per check item processing will be included in business analysis.*

COMMITMENT PERIOD	3 YEARS
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\*Price includes hardware lease, software lease, monthly service charge, replacement ink cartridges and first 100 processed items/month.

\*\*Early cancellation of lease: During 1<sup>st</sup> year \$750.00; During 2<sup>nd</sup> year \$500.00; During 3<sup>rd</sup> year \$250.00

CUSTOMER		BANK
Company:		<div style="margin-bottom: 10px;">Manager: _____</div> <div style="margin-bottom: 10px;">Date: _____</div> <div style="margin-bottom: 10px;">Notes:</div>
Signer 1:	_____	
Date:	_____	
<i>Two Signer Account: requires 2<sup>nd</sup> signature</i>		
Signer 2:	_____	
Date:	_____	

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## Schedule B

### Processing Days and Times Definitions

Banking transactions are processed on Banking days only. Banking days include Monday, Tuesday, Wednesday, Thursday & Friday unless one of these days falls on a Federal or State recognized holiday. These holidays include:

JAN	New Year's Day	SEP	Labor Day
JAN	Martin Luther King Jr. Day	OCT	Columbus Day
FEB	President's Day	NOV	Veterans Day
MAY	Memorial Day	NOV	Thanksgiving Day
JUL	Independence Day	DEC	Christmas Day
JUL	Pioneer Day		

If banking transactions are made on any non-banking day they are processed on the next banking day. For instance a transaction made on Saturday of a regular weekend would be processed on the Monday after the weekend.

Banking transactions are processed the same day they are made if they are made on a banking day before 6:00pm MT. If a transaction is made on a banking day after 6:00pm MT it is processed on the next banking day. For instance a transaction made on Friday at 7:00pm MT will be processed on the Monday after the weekend. If that Monday were a holiday the transaction would be processed Tuesday after the holiday.

CUSTOMER		BANK
Company:		
Signer 1:	_____	Manager: _____
Date:	_____	Date: _____
<i>Two Signer Account: requires 2<sup>nd</sup> signature</i>		Notes:
Signer 2:	_____	
Date:	_____	



ADDENDUM  
Last Revised on July 3, 2018

Customer Responsibilities: July 13, 2018

(xii) Customer agrees not to use the service to scan and deposit (1) Checks drawn on a financial institution located outside of the United States of America, (2) Savings Bond, (3) Checks payable to any person or entities other than you, (4) Third Party, i.e. any item made payable to another party and then endorsed over to you by such party, (5) Check purported to be a lottery or prize winning, (6) checks or items dated more than six (6) months prior to the date of deposit. If any of these items are scanned for deposit, the Bank may reject the items and reserve the right to suspend or terminate your use of service.