

# COMMERCIAL REMOTE DEPOSIT CAPTURE AGREEMENT

Account  
Holder:

Financial Institution: Peoples Bank & Trust  
200 S Locust  
PO Box 350  
Pana, IL 62557

Date: \_\_\_\_\_

(Account Holder is herein referred to as Business.)

## Account Information

Account Number of PB&T Checking: \_\_\_\_\_

Business Nettle ID: \_\_\_\_\_

Primary Contact Name and Title: \_\_\_\_\_

Primary Contact Phone Number: \_\_\_\_\_

Primary Contact Email Address: \_\_\_\_\_

## Fees for this Service:

Monthly Fee: \$25.00 first account and \$2.00 per additional account (subject to change)

Per Item Fees: \$0.10 per deposit check item

Per Item Fee: \$2.00 per NSF check item

Per Item Fee: \$0.10 per accounts receivable collection (ARC)

Per Item Fee: \$0.10 per back office conversion (BOC) item

Per Item Fee: \$0.10 per point of purchase (POP) item

Per Item Fee: \$4.00 per returned check collection (RCK) item

Per Item Fee: \$0.10 per ARC, BOC, POP, RCK return item

Equipment Lease: Standard monthly equipment lease per scanner \$35.00

## Limits of Service:

Items Deposited Per Month:

Aggregate Deposit Dollar Amount Limit Per 15 Days: \$ \_\_\_\_\_ (subject to change)

Deposit Dollar Amount Limit Per Day (optional): \$ \_\_\_\_\_ (subject to change)

This agreement is between the Financial Institution and the Business and is intended to govern the depositing of the Business's checks through the Internet or by creating information to deposit checks through the software provided by the Financial Institution, based on information submitted by the Business to the Financial Institution ("Agreement"). The accepted terms are as follows:

### 1. DEFINITIONS.

1.1 "Account" means the Business's designated deposit account at the Financial Institution.

1.2 "Business Day" Every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before 6:00 p.m. on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 6:00 p.m. or on a day we are not open, we will consider that the deposit was made on the next business day we are open.

1.2 "Check" means a draft, payable on demand and drawn on or payable through or at an office of a bank, whether or not negotiable, that is handled for forward collection, including a Substitute Check and other non cash items; and does not include a non-cash item payable in a medium other than United States dollars.

1.3 "Customer" means a debtor obligated on one or more Checks.

1.4 "PB&T Remote Desktop Deposit" means all information, web-based services, technological infrastructure and installed software on the Business's computers, which allow the Financial Institution to submit Checks for deposit through the Internet.

1.5 "Security Procedures" means the use of identification codes, encryption, passwords, logon identifications, personal or location identification numbers, repetitive codes, and other security devices, systems and software used by the Business to communicate through the Internet for PB&T Remote Desktop Deposit.

1.6 "Services" means all duties to be performed by the Financial Institution regarding PB&T Remote Desktop Deposit.

1.7 "Substitute Check" (a/k/a IRD "Image Replacement Document") means a paper reproduction of the original check that: (a) contains an image of the front and back of the original check; (b) bears a MICR (Magnetic Ink Character Recognition) line containing all the information on the MICR line of the original check, except as provided under generally applicable industry standards for substitute checks to facilitate the processing of substitute checks

(c) conforms, in paper stock, dimension, and otherwise, with generally applicable industry standards for substitute checks; and; (d) is suitable for automated processing in the same manner as the original check.

### 2. DUTIES AND RESPONSIBILITIES OF THE FINANCIAL INSTITUTION

2.1 **Use of Service.** Under the terms and conditions of this Agreement, Financial Institution hereby grants to Business a non-exclusive ability to utilize PB&T Remote Desktop Deposit through the Internet or by creating information to deposit checks through the software provided by the Financial Institution, and to use the Financial Institution's proprietary documentation for the term of this Agreement.

2.2 **Processing.** Financial Institution will process, encode, endorse and deposit into the Account, Checks submitted by Business through PB&T Remote Desktop Deposit in accordance with Financial Institution's internal procedures and all state and federal laws during any business day, subject to the Cutoff Time as stated above, as may be in effect from time to time. Financial Institution will not examine Checks to verify any data or dates. Financial Institution will process the Check according to the amount entered by Business, if applicable, or by the numeric amount shown. If the numeric amount is unclear, Financial Institution may process the Check according to the written amount, and Financial Institution may correct the amount entered by the Small Business. If the Check is ambiguous, Financial Institution will return the check as an exception. Checks made payable to the Business or any reasonable derivation thereof are acceptable for deposit. If a Check does not have the necessary information to be processed by the Financial Institution, then the Financial Institution will treat the Check as an exception. If a Check is treated as an exception, it will be forwarded by Financial Institution to the Business, and not deposited or otherwise reflected in the account of Business. Financial Institution will disregard any notation on a Check containing "paid in full" or other restrictive notation, whether preprinted or handwritten, and treat any such Check as though such notation did not appear thereon.

2.3 **Reporting.** Financial Institution will make reports regarding PB&T Remote Desktop Deposit available through a Financial Institution designated web page, which the Business may access through the Internet. Specifically, the Financial Institution shall make available from time to time a report stating the total amount deposited to the Account, as well as a listing of individual items deposited, which the Business may access through the Internet.

### 3. DUTIES AND RESPONSIBILITIES OF THE BUSINESS

3.1 **Use of PB&T Remote Desktop Deposit.** The Business shall submit valid Checks payable to Business by using PB&T Remote Desktop Deposit. In using PB&T Remote Desktop Deposit, Business shall create an image of the Check or Checks and the associated MICR data using approved hardware as listed on the Terms of Use and Procedures. If applicable, Business agrees to enter in the amount of the Check using the written amount of the Check into PB&T Remote Desktop Deposit in the data field provided. The Business will endorse the back of all checks presented for deposit to prevent redeposit. The business shall hold the original written checks in a secure environment (a locked, fire-proof container with limited access to employees) for a period of at least 14 days, but not to exceed 60 days. The Business further agrees to shred or otherwise destroy all original checks after a reasonable period of time, after the Business verifies credit to their account for the check, but not to exceed 60 days. The Business should establish procedures such that at the end of the 60 days retention period, all checks should be destroyed to ensure that the checks cannot be submitted for payment and data on the checks cannot be reviewed or duplicated. The Business should maintain a check destruction log to ensure checks are destroyed and the end of the retention period (date of deposit + 60 days) and to evidence the actual date of destruction. Business agrees to abide by all Terms of Use and Procedures for using PB&T Remote Desktop Deposit. All equipment, manuals or other materials supplied by bank shall be returned to bank within 5 business days after termination of this agreement.

**3.2 Software, Internet, and Hardware.** The Business will utilize minimum hardware, internet and software requirements including use of Windows XP Professional (or) Windows XP Home (or) Windows Vista Home Edition (or) Windows Vista Business Edition (or) Windows Vista Enterprise Edition (or) Windows Vista Ultimate Edition, Internet Explorer 7 or 8, and Check Reader/Scanner (provided by Peoples Bank & Trust ). The Business will utilize best acceptable computer use practices including but not limited to anti virus software, firewall and password protections. The Business will comply with all software, internet and hardware requirements of the Terms of Use and Procedures as posted on the Financial Institutions website and updated from time to time.

**3.3 Fee for Services.** Business shall compensate Financial Institution for the performance of the Service in accordance with the pricing established by Financial Institution, as stated above. Amounts payable by Business to Financial Institution shall be collected on a monthly basis by Financial Institution. Financial Institution may collect any of the foregoing amounts and any other amounts due by Business to Financial Institution hereunder or in connection with the provision of the Service to Business by debiting any of Business's accounts with Financial Institution, billing Business, and/or setting off against any amounts Financial Institution owes Business, without any obligation to give prior notice thereof to Business. Financial Institution may change pricing from time to time by providing Business with thirty (30) days written notice of a pricing change. If Business does not accept the pricing change, then Business must notify Financial Institution within fifteen (15) days of the effective date of the pricing change. Business shall also pay any sales, use or similar tax applicable to the Service. If Financial Institution is required to pay any such taxes, Business shall reimburse Financial Institution upon demand. Business shall also pay all out-of-pocket attorneys' fees and other costs and expenses Financial Institution may incur in collecting any fees or other sums Business may owe to Financial Institution in connection with the Service. Financial Institution shall also have the right to credit or debit any accounts of Business with Financial Institution to correct any processing irregularity in connection with the Service.

**4. REPRESENTATIONS, WARRANTIES, COVENANTS, AND LIABILITY**

**4.1 Representations and Warranties.** Business and Financial Institution each represents and warrants to the other, as of the date this Agreement is entered into and at the time the Service is used or performed, that: (a) it is validly existing and in good standing under the laws of the jurisdiction of its organization; (b) it has all requisite power and authority to execute and deliver, and to perform its obligations under, this Agreement and the Service used or performed by it; (c) this Agreement has been duly authorized and executed by it and constitutes its legal, valid and binding obligation; and (d) any consent or authorization of any governmental authority or third party required to be obtained by it in connection with this Agreement or the Service used or performed by it has been obtained. Financial Institution makes no representation or warranty, express or implied, and disclaims all warranties as to the merchantability, fitness for a particular purpose or suitability of the Services for Business, or as to the compatibility of Financial Institution's software, equipment or communication interfaces with those of Business. The Business represents and warrants that: (a) it is fully authorized to enter into and perform under this Agreement, and that this Agreement constitutes its legal, valid and binding obligation; (b) the Business is solvent and in good standing in the State of its organization; (c) it is not the present intent of the Business to seek protection under any bankruptcy laws; (d) its Checks are currently and were at the time of their creation, bona fide and existing obligations of Customers of the Business, free and clear of all security interests, liens, and claims whatsoever of third parties and are not now nor have they ever been declared in default; (e) the documentation under which the Checks are payable authorize the payee to charge and collect the monies owed ; (f) all Checks and all documents and practices related to them comply with all applicable federal and state laws.

**4.2 Covenants.** The Business covenants that it will: (i) allow the Financial Institution to review and inspect during reasonable Business hours, and the Business will supply, all financial information, financial records, and documentation of the Business regarding the Checks that the Financial Institution may request; (ii) the Checks submitted by Business are valid Checks, the Business will reimburse and indemnify the Financial Institution for all loss, damage and expenses, including reasonable attorneys' fees, incurred in defending such transactions as invalid or fraudulent Checks; and (iii) in the event of the commencement of any proceeding under any bankruptcy or insolvency laws by or against the Business, the Business will not oppose or object to any motion by the Financial Institution seeking relief from the automatic stay provisions of such laws.

**4.3 Liability.** Financial Institution will exercise ordinary care in providing the Service and will be responsible for any loss sustained by Business only to the extent such loss is caused by Financial Institution's reckless or willful misconduct. In no event shall clerical errors or mistakes in judgments constitute failure to exercise ordinary care, nor shall Financial Institution have any liability for any indirect, incidental, consequential (including lost profits), special or punitive damages, whether arising in contract or in tort, and whether or not the possibility of such damages was disclosed to or could have been reasonably foreseen by Financial Institution. Under no circumstances shall Financial Institution bear any liability or responsibility for any loss or damage resulting from or relating to any delay in performance of or failure to perform in connection with the Service. This includes the effects of interruption of telephone, telefacsimile or communication facilities, delay in transportation, equipment breakdown or mechanical malfunction, electrical, power or computer failure, accidents, fire, flood, explosion, theft, natural disaster or other catastrophe, acts or failure to act by Business or any third party, strikes or lockouts, emergency conditions, riots, war, acts of government or other circumstances which are unavoidable or beyond Financial Institution's control. Financial Institution shall not be liable for failure to perform any of its obligations in connection with the Service if such performance would result in it being in breach of any law, regulation or requirement of any governmental authority. If Financial Institution fails to credit any of Business's accounts utilized in connection with the Service in accordance with the Service Terms and Conditions applicable thereto as of the date such credit was earned, upon discovery or notification of such error, Financial Institution will properly credit such account, but Financial Institution shall not incur any liability therefore, including any loss resulting from failure by Business to invest the amount of funds not properly credited to the account.

**5. Indemnification.** Business shall indemnify and hold harmless Financial Institution and each of its directors, officers, employees, agents, successors and assigns ("Indemnitees") from and against all liability, loss and damage of any kind (including attorneys' fees and other costs incurred in connection therewith) incurred by or asserted against such Indemnitee in any way relating to or arising out of the Service, by reason of any acts or omissions of Business or any third party or otherwise, except to the extent such liability, loss or damage is caused by the gross negligence or willful misconduct of such Indemnitee. In no event will any Indemnitee be deemed to have committed gross negligence or willful misconduct in any situation where the Indemnitee acts in good faith. Indemnitee may rely upon a reasonable belief that any oral, telephonic, electronic, written or other request was sent from the Business.

**6. Security Procedures and Communications.** Certain Security Procedures designed to verify the origination (but not errors in transmission or content) of instructions, orders and other communications sent by Financial Institution and Business might be used in connection with the Service. Business agrees that any such mutually agreed-upon Security Procedures shall be deemed commercially reasonable. Financial Institution shall not be obligated to act on a communication not transmitted in accordance with the Security Procedures and may refuse to act on any communication where Financial Institution reasonably doubts its authorization, contents, origination or compliance with the Security Procedures. Financial Institution shall have no duty to discover, and shall not be liable for, errors or omissions by Business. If Financial Institution complies with the Security Procedures with respect to a communication, Financial Institution shall be entitled to act on that communication and shall not be obligated to verify the content of such communication, establish the identity of the person giving it, or await any confirmation thereof, and Financial Institution shall not be liable for acting on, and Business shall be bound by, any communication sent in the name of Business, whether or not authorized. Financial Institution reserves the right to issue new Security Procedures and/or to cancel or change any Security Procedures from time to time. Whenever the Security Procedures include the assigning to Business of any confidential password, logon identification, identification code, personal or location identification number, repetitive code, or similar security device, Business shall not disclose such security device except to employees or agents authorized to act for Business in connection with the Service. Business shall implement such safeguards as are reasonably necessary to ensure the confidentiality and integrity of such security devices, and shall immediately notify Financial Institution if the confidentiality or integrity of any such security device is breached or threatened. Business shall confirm that all access security features (password protection, multi-factor authentication, tokens, biometrics, etc.) are kept secure from theft or outside access. In particular, features such as tokens should be kept securely under lock and key to avoid access of the security feature by unauthorized individuals. Business shall be solely responsible for the safekeeping of confidential password, log-on identification, identification code, personal or location identification number, repetitive code, or similar security device and assumes all risk of accidental disclosure or inadvertent use of such security devices by any party whatsoever, whether such disclosure or use is on account of Business's negligence or deliberate acts or otherwise. Financial Institution shall not be liable for any loss or damage resulting from fraudulent, unauthorized or otherwise improper use of any security devices.

**7. Confidentiality.** All user guides, manuals, data, software, processes and other information provided to Business in connection with the Service and all fee and pricing information with respect to the Service ("Information") is the proprietary and confidential property of Financial Institution and/or its relevant licensors or suppliers. Business agrees to use the Information only in the manner specified by Financial Institution and in the ordinary course of Business's Business, to return it to Financial Institution upon termination of the relevant Service, and to keep the Information confidential and limit access thereto only to its agents and employees who require access in the normal course of their duties, except to the extent the Information is already in the public domain or Business is required to disclose the Information by law.

**8. Intermediaries.** Financial Institution may utilize any outside payment system or intermediary organization to assist in providing the service, and rely upon any communication from such a provider. Financial Institution's performance of the Service is subject to the rules and regulations of any such system or organization. Financial Institution may engage third parties to provide the Service. Financial Institution shall have no obligation to disclose arrangements with third parties to Business or obtain Business's consent thereto. Business authorizes the transfer of information relating to Business to agents of Financial Institution or Business for use in connection with the Service or as required by law.

**COMMERCIAL REMOTE DEPOSIT CAPTURE AGREEMENT  
(Continued)**

**9. Recordings and Records.** Either Business or Financial Institution may produce telephonic or electronic recordings or computer records, including e-mail and telefacsimile transmissions, as evidence in any proceedings brought in connection with the Service. Business agrees to Financial Institution's telephonic or electronic recording for security and quality of service purposes.

**10. Notices.** Any notice or other communication may be sent by Financial Institution to Business at Business's postal, e-mail, telefacsimile or other address provided by Business to Financial Institution, and Financial Institution may assume that any notice or communication sent to Business at any such address has been received by Business, until Business notifies Financial Institution in writing of another address.

**11. Accounts.** The Service involving Business's accounts at Financial Institution are subject to Financial Institution's terms and conditions of deposit accounts and availability schedules in effect from time to time, provided that in the event of any conflict between this Agreement and Financial Institution's terms and conditions of deposit accounts, this Agreement shall prevail.

**12. Discrepancies.** Business shall promptly notify Financial Institution in writing by U.S. mail of any error in connection with the Service and any discrepancies between any records maintained by Business and any notice Business receives from Financial Institution with respect to the Service, and shall provide Financial Institution with any information it may reasonably request in connection therewith. Business agrees that fourteen (14) days is a reasonable time for Business to notify Financial Institution of errors or discrepancies, unless any other agreements, or laws, rules or regulations provide for a shorter period. Financial Institution shall have the right to correct the amount in the data field for any Check that has an incorrect amount to be consistent with the image of the Check. Notwithstanding the foregoing, if Financial Institution at any time discovers that the legal amount of the Check is different than the amount that has been credited to Business's Account, Financial Institution will make the necessary adjustment to the Account to correct the discrepancy.

**13. Compliance.** Business shall comply with all laws, rules and regulations in connection with the Services. Business agrees to be bound by such rules, and agrees that no entries that violate United States law may be initiated. Business shall be responsible for and shall fully indemnify Financial Institution for any and all fines and assessments imposed on Financial Institution as a result of any infraction or violation of such rules caused by or attributable to Business.

**14. Disclosure.** Business acknowledges that Financial Institution may disclose nonpublic information of the Business to third party affiliates and third party nonaffiliates as permitted by law. The Financial Institution may have certain legal record keeping and reporting requirements with respect to the Service and consents to Financial Institution's disclosure to governmental authorities of information concerning Business and the Service provided to Business which Financial Institution believes to be appropriate or necessary to fulfill such legal requirements.

**15. Fiduciary Status.** Nothing contained herein shall be deemed to create fiduciary status on the part of Bank in connection with the provision of the Service. The foregoing notwithstanding, to the extent, if any, that Bank is deemed to be a fiduciary of Business in providing the Service, this Agreement is not intended to, nor shall, relieve Bank of any fiduciary responsibility otherwise imposed on it by law.

**16. Termination.** Either party may terminate the Service by providing sixty (60) days' prior written notice to the other party. Financial Institution may also terminate or suspend the Service without notice to Business if any of the following occurs: (a) the financial institution reasonable perceives a material change in operation control or the financial condition of the Business; (b) Business becomes insolvent or files, or has filed against it, any bankruptcy or other insolvency, reorganization, liquidation or dissolution proceeding of any kind; (c) a material adverse change occurs in Business's Business or financial condition; (d) Financial Institution has reason to believe that Business has engaged in fraudulent or illegal activity; (e) Business fails to maintain balances in accounts sufficient to cover overdrafts; (f) Business violates the terms of this or any other Agreement or any financing arrangement with Financial Institution; (g) Business fails to provide financial information reasonably requested by Financial Institution; (h) Financial Institution determines it is impractical or illegal to provide the Service because of changes in laws, regulations or rules; or (i) Financial Institution, in good faith, is unable to satisfy itself that the Service have been properly authorized by Business. Notwithstanding any termination, the terms of this Agreement shall apply to all transactions, which have been initiated prior to termination.

**17. Governing Law: Severability.** Except to the extent superseded by Federal law, the provision of Services shall be governed by the laws of the state in which the principal office of Financial Institution is located. Business agrees that the courts of such state shall have jurisdiction to hear any dispute arising out of the Service and submits to the jurisdiction of such courts. Any provision of this Agreement, which is unenforceable, shall be ineffective to the extent of such provision, without invalidating the remaining provisions of this Agreement. If performance of the Services would result in violation of any law, regulation or governmental policy, this Agreement shall be deemed amended to the extent necessary to comply therewith.

**18. Financial Accommodation.** Business and Bank agree that this Agreement and the Services constitute an agreement to provide a "financial accommodation" as defined in 11 U.S.C. §365.

**19. Arbitration.** All disputes, controversies or differences which may arise between the parties out of or in connection with the Agreement, which cannot be settled by negotiation within thirty (30) days of the matter first being notified in writing to the other by the complaining party, shall be finally settled by binding arbitration in accordance with the commercial arbitration rules. The arbitration of all matters shall be conducted by three (3) arbitrators ("Panel of Three") with each party selecting one (1) arbitrator, and the third to be selected from the panel of arbitrators, who shall serve as the chair of the Panel of Three. If either party refuses or neglects to appoint an arbitrator within thirty (30) days after receipt of written notice from the other party requesting it to do so, the requesting party may appoint two (2) arbitrators. The place of the arbitration shall be in the same city as the principal office that the Financial Institution is located. The arbitration award shall be final and binding upon the parties. Any judgment upon such award may be enforced in any court having jurisdiction, or application may be made to such court for a judicial confirmation of such award and judgment or order of enforcement, as the case may be. The cost of the arbitration shall be borne equally by the parties unless otherwise provided in the arbitration award. The parties hereto agree that the arbitration award will be the sole and exclusive remedy between them regarding any and all claims, counterclaims, or issues. In order to have arbitration as the sole and exclusive remedy, the parties hereto exclude the right of appeal to courts of the United States, or any other courts, in connection with any question of law arising in the course of the reference to arbitration or out of the arbitration award.

**20. Waiver of Jury Trial.** BUSINESS AND FINANCIAL INSTITUTION WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY LITIGATION OR OTHER PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE SERVICES USED BY BUSINESS. This transaction is taking place in Christian County IL. The courts serving that county shall have Jurisdiction over any legal proceeding arising from or relating to this agreement.

**21. GENERAL.** This Agreement manifests the entire agreement between the parties regarding the subject matter hereof and supersedes all prior understandings, writings, proposals, representations or communications, oral or written, of either party. Neither party relied on any representation or promise by the other party that are not set forth in this Agreement. This Agreement may not be assigned by the Business without Financial Institution's prior written consent. Financial Institution may assign this Agreement without Business's consent. Neither Business nor Financial Institution shall display any name, trademark or service mark of the other without the prior written consent of the other. Business shall not advertise or promote the Service without Financial Institution's prior written consent. This Agreement shall bind and benefit the parties and their successors and assigns. None of the terms of this Agreement may be waived except as Financial Institution may consent in writing, and no agreement with or representation made by any employee of Financial Institution that is in conflict with this Agreement will be binding on Financial Institution unless contained in a written modification of this Agreement signed by an authorized officer of Financial Institution. No delay on the part of Financial Institution in exercising any right or power under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power under this Agreement preclude further exercise thereof or the exercise of any other right or power. The rights and remedies under this Agreement are cumulative and not exclusive of any rights or remedies which Financial Institution would otherwise have. Section headings in this Agreement are for convenience of reference only and do not constitute a part hereof or thereof. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

Signatures of Authorized Individuals.

X \_\_\_\_\_  
Authorized Signer

(Signatures and printed names of each account signer)

**COMMERCIAL REMOTE DEPOSIT CAPTURE AGREEMENT  
(Continued)**

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**FINANCIAL INSTITUTION:**

**PEOPLES BANK & TRUST**

**X** \_\_\_\_\_  
**Authorized Signer**