



## Bank of the Pacific Mobile Deposit End User Terms and Conditions

("Service"). This service utilizes the Mobile Banking App to transmit check images for deposit to your Bank of the Pacific Deposit Account. This Service is only available to customers in good standing and who have also enrolled in Online Banking and Mobile Banking with Bank of the Pacific. By enrolling to use the Service, or using the Service, you agree to be bound by the terms and conditions contained in this Mobile Deposit Disclosure and Agreement ("Agreement").

Please read this Agreement carefully and keep it for future reference. In addition to this Agreement, your Account is also governed by your Deposit Account Terms and Conditions. However, in the event of a conflict, the terms and conditions of this Agreement shall supersede the Deposit Account Terms and Conditions with respect to the deposits made through the Service. Deposits made through other channels continue to be governed by the Deposit Account Terms and Conditions.

### **Definitions**

You and Your - mean a person who has applied for or uses the Bank of the Pacific Mobile Deposit Service.

Bank, we, us and our - mean Bank of the Pacific.

Account - means your deposit account with us to which you are authorized to make a deposit using a Mobile Device.

Mobile Device - means any device acceptable to us that provides for the capture of Images from checks and for transmission through the clearing process. At present, the supported Mobile Devices are Apple and Android/Samsung devices. Supported devices are subject to change without prior notice to you, but we will advise you upon any changes to hardware and software requirements.

Check - is an original: check, cashier's check, official check, U.S. Treasury check, or any other payment instrument, drawn on a financial institution within the United States and payable in U.S. currency that is payable to you. Checks are deemed to be "items" under the Uniform Commercial Code and "checks" under The Expedited Funds Availability Act and Regulation CC.

Check 21 - means the Check Clearing for the 21st Century Act.

Image - means the electronic image of the front and back of a check, in addition to other required information, as specified by us, in the format we specify.

Image Replacement Document (or "IRD") means a substitute check, as defined in Check 21.

Mobile Deposit Website Information - means the application download instructions, device instructions, FAQs and other information regarding the Mobile Device and the Service we provide to you on our Internet site from time to time, in addition to any help content contained within the software application that is downloaded to your Mobile Device.

### **Electronic Communications/Consent to Electronic Disclosures**

You agree that by accessing this Agreement through Online Banking and by submitting this enrollment in the Service, you affirmatively consent to receive and acknowledge that you can access, receive and retain this Agreement, notices and disclosures related to the provision of this Service electronically, by electronic means, and not in paper or non-electronic form. You acknowledge that by accessing Online Banking, you satisfy the hardware and software requirements for Online Banking described in the Online Banking Agreement and that you have reasonably demonstrated that you can access, receive and retain the Agreement and further, by accessing the Service, you satisfy the hardware and software requirements for this Service discussed more fully below. You cannot apply for the Service unless you agree to receive the Agreement and disclosures in electronic form. You may ask us to also provide you with paper copies of the Agreement and disclosures by calling us at 360-537-4090 option 2. Paper copies will be provided to you at no cost.

### **Receiving Notice Electronically and withdrawal of consent**

We will provide notices and disclosures as part of your enrollment process or post same on our website with appropriate notice to you as permitted by applicable law. We will consider your acceptance of this

Agreement as confirmation of receipt of this notice and disclosure. You agree to notify us promptly if your mailing address, e-mail address or other information changes by calling us at 360-537-4090 option 2, writing us at 1216 Skyview Drive, Aberdeen, WA 98520 or submitting the changes through Online Banking. You can withdraw your consent at any time by notifying us as noted above; however, the Agreement and your access to and use of the Service will automatically be terminated. Termination of your consent will not affect the legal validity, enforceability and binding effect of any notice, disclosure or the terms of the Agreement before the effective date of the termination of the consent.

## Terms

**1. Mobile Deposit Service.** Pursuant to the terms of this Agreement, you may use the Service to deposit checks to your Deposit Account by creating an Image of the check using a Mobile Device, and transmitting that Image to us for deposit.

You agree to endorse any check transmitted through the Service with your signature and adding the restrictive endorsement "For Deposit Only" or as otherwise instructed by us, and to check mark the box "Check Here if Mobile Deposit" prior to transmission of the check. You agree to follow any and all other procedures and instructions for use of the Service as we may establish from time to time. You agree that Bank may, in its sole discretion and without prior notice to you, reject checks not endorsed as set forth herein or as otherwise established by us from time to time.

**2. Representations and Warranties.** In using the Service you warrant that:

- (a) only checks drawn on financial institutions within the United States, excluding its territories, are being deposited;
- (b) no foreign checks are being deposited;
- (c) you are not depositing a check that has previously been deposited whether via the Service or at an ATM or at another location and no duplicate files or checks are being deposited;
- (d) the original check will not be deposited;
- (e) all checks are made payable to you or the account owner;
- (f) all signatures on each check are authentic and authorized and that each check has not been altered;
- (f) each check image being deposited is an accurate representation of all information on the front and back of the original check at the time the original check was converted to a check image and the check image contains all endorsements from the original check;
- (g) each check image being deposited contains a record of all MICR line information required for a Substitute Check and otherwise satisfies all of the requirements of Check 21 and Regulation CC for the creation and/or transferring of a Substitute Check (as defined in Regulation CC) created from that check image;
- (h) you have complied with all rules, regulations and laws concerning the deposit;
- (i) your Financial Institution and the Service will not sustain a loss as a result of your deposit of a check image;
- (j) you are not using the Service as a conduit for money laundering or other illicit purposes;
- (k) there is no pending or outstanding order or judgment and there is no law or regulation that would prohibit the deposit or the transaction relating to the deposit;
- (l) you are not a national of a designated blocked country or "Specially Designated Nations," "Blocked Entity" or have any other designation or otherwise blocked as defined by the United States Office of Foreign Assets Control.

**3. Eligibility.** Mobile Deposit is a service available to Bank of the Pacific customers who are currently and remain in good standing and have had their account open for more than 60 days. You must have a compatible wireless, web-enabled cell phone or other type of mobile device and be an active Online Banking user.

**4. Fees.** There is no fee to deposit a check through mobile deposit.

**5. Limits and Processing Time.** Customers may make multiple Mobile Deposits each day; however, no single check or total deposit shall exceed \$5,000. If you attempt to initiate a deposit in excess of these

limits, Bank of the Pacific will reject your deposit. Limit adjustments may be requested by contacting the Electronic Banking Department at 360-537-4090 option 2 or your local branch. Deposits made on a business day before 5:00 pm Pacific will be credited to the Deposit Account on the same business day after end of day processing and made available in accordance with Regulation CC.

Bank of the Pacific reserves the right to adjust these limits based on account activity, abuse of the Service, or general risk parameters as determined by the Bank. If you attempt to initiate a deposit in excess of these limits, we may reject your deposit.

**6. Hardware and Software Requirements.** You agree to transmit an Image to us using only a Mobile Device expressly authorized by us for your use to transmit Images. At present, the supported Mobile Devices are Internet enabled Apple and Android/Samsung devices. We may, but are not required to, reject Images that you transmit to us with an unauthorized Mobile Device or by other means which we have not authorized in this Agreement.

You are solely responsible for the security of the Mobile Device and for allowing its use only by individuals authorized by you. You agree to implement and maintain specific internal security controls to protect the Mobile Device and customer information that may be displayed on the Mobile Device through the Service. We may require that you implement and maintain additional specific controls, and we may notify you of those controls and amend them from time to time.

You are responsible for all costs of using the Service and operating the Mobile Device, including, but not limited to, mobile service provider fees, associated data plan fees, and Internet service charges.

You are solely responsible for maintaining the Mobile Device's system capacity and connectivity required for use of the Service. We shall notify you of those requirements and any resulting changes to hardware or software requirements, and we may amend them from time to time.

**7. Image Quality.** You are responsible for the image quality of any Image that you transmit. If an Image that we receive from you or for deposit to your Account is not of sufficient quality to satisfy our image quality standards as we may establish them from time to time, we may reject the Image without prior notice to you.

Each Image must include the front and back of the check and the following information must be clearly legible: amount, payee name, drawer signature, date, check number, account number, routing and transit numbers, MICR (Magnetic Ink Character Recognition) line, and any endorsement or other information written on the check.

**8. Processing Images.** You authorize us to process any Image that you send us or convert an Image to an Image Replacement Document (IRD). You authorize us and any other bank to which an Image is sent to handle the Image or IRD.

**9. Deposit of other Checks; Deposits when Service not Available.** You agree that you will not use the Service to deposit anything not meeting the definition of a check. If you use the Service to transmit anything that is not a check, or if for any reason we are not able to recognize something transmitted as a check, we may reject it without prior notice to you. You agree to make those deposits through other channels that we offer, such as at a Bank of the Pacific office location, ATM, or mail. You further agree to use such other channels when the Service may not be available.

**10. Handling of Transmitted Checks.** For any Image which you have transmitted, you shall be responsible for preventing the transmission of another Image of the check or presentment of the check by any other means. If any check is presented or deposited more than once, whether by Image or by any other means, we may, at our discretion, reject it or return it and charge it against your Account without prior notice to you.

You agree to retain the check in a secure location for 14 calendar days from the date of the Image transmission, and thereafter to either destroy any check of which you have transmitted an Image, or to otherwise render it incapable of transmission or presentment.

**11. Confirmation of Deposit.** An Image of a check shall be deemed received only when it is viewable within your Mobile Deposit history within Online Banking or the App. You are responsible to confirm that the deposit has posted to your account. You may view an image of the deposited item in the Online Activity Center / Deposited Checks tab.

**12. Email Notification.** If you have a valid email address in your online/mobile banking profile, we will send you an email confirmation of your deposit status.

**Your deposit has been received** – Your deposit has been received. Although your deposit has been received, it could be canceled, it is important for you to confirm the status of your deposit. You will receive a second email notification once your deposit has either been approved for processing or has been canceled and will not process. Deposits received prior to 5:00 pm M-F on a day we are open for business will be processed same day and funds will be made available to you by @ 10:00 pm Pacific. Deposits made after cut off will be processed the following business day and available to you after nightly processing.

**Your deposit has been approved** – Your deposit has been approved for processing. Deposits received prior to 5:00 pm M-F on a day we are open for business will be processed same day and funds will be made available to you by @ 10:00 pm Pacific. Deposits made after cut off will be processed the following business day and available to you after nightly processing.

**Your deposit has been canceled** - Your deposit has been canceled and will not process.

**13. Funds availability.** If an Image you transmit through the Service is received and accepted before 5:00 p.m. Pacific on a business day that we are open, we consider that day to be the day of your deposit. However, if you make a deposit after closing or on a day we are not open, we will consider that the deposit was made on the next business day we are open. You agree, however, in some cases we will not make all of the funds available to you immediately after your deposit. In such instances, the first \$200 of a day's total deposits may be available immediately, and the remainder will generally be available by the second business day after the day of your deposit.

**14. Business Days/Hours** For purposes of this disclosure, our business days/hours are Monday through Friday 8:00 am – 5:00 pm Pacific except for Federal Holidays.

**15. Errors** You agree to notify us of any suspected errors regarding checks deposited through the Service as soon as possible, and in no event later than 60 days after the applicable Bank account statement is sent to you or made available to you if you have chosen to receive eStatements. Unless you notify us within 60 days, such statement regarding all deposits made through the Service shall be deemed correct, and you are prohibited from bringing a claim against us for such alleged error.

**16. Cooperation with Investigations.** You agree to cooperate with us in the review or investigation of any transactions, poor quality transmissions or claims, including, without limitation, by providing, upon request and without further cost, any originals or copies of checks in your possession and your records relating to checks and transmissions.

**17. Additional Terms Applicable to Business Accounts.** If you are using the Service to deposit checks into a business account, you agree to notify Bank of the Pacific of the following: (a) any change in a representation or statement made or furnished by you or on your behalf in your application; (b) if a material change occurs in your ownership or organizational structure (acknowledging that any change in ownership will be deemed material when ownership is closely held); (c) you liquidate or dissolve, or enter into any consolidation merger, partnership, or joint venture; (e) you sell any assets except in the ordinary course of my business as now conducted, or sell, lease, assign or transfer any substantial part of your business or fixed assets or any property or other assets necessary for the continuance of your business as now conducted including, without limitation, the selling of any property or other assets accompanied by the

leasing back of the same; (f) you cease doing business, become insolvent, a receiver is appointed for all or any part of your property, you make an assignment for the benefit of creditors, or any proceeding is commenced either by you or against you under any bankruptcy or insolvency laws or any other law or laws relating to debtors; (g) if you are a sole proprietorship, the owner dies; (h) if you are a partnership, any general or managing partner dies; (i) if you are a corporation, any principal officer or 10.00% or more of the shareholders die; (j) If you are a limited liability company, any managing member dies; (k) if you are any other form of business entity, (any person(s) directly or indirectly controlling ten percent (10.00%) or more of the ownership interests of such entity dies; (l) If there is any change in the authorized signers for any account(s); (m) any creditor tries to take any of your property on or in which Financial Institution has a lien or security interest, including a garnishment of any of your Bank of the Pacific accounts; (n) a judgment or judgments is entered against you that is not satisfied within thirty (30) days or stayed pending appeal; (o) an involuntary lien or liens is attached to any of your assets or property and not satisfied within thirty (30) days or stayed pending appeal; (p) an adverse change occurs in your financial condition or applicable credit histories; or (q) you are in default under any agreement for borrowed money or any other material contract. You agree to provide Bank of the Pacific any financial records reasonably requested to determine my financial status during the term of this Disclosure and Agreement.

**18. Indemnification and Limitations on Liability.** In addition to the indemnifications and limitations on liability contained in the Account Agreement, you hereby indemnify and hold harmless Bank 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 (a) the Service, (b) any image, check or IRD, (c) any failure by you to comply with the terms of this Agreement or breach by you of any representation or warranty contained herein, (d) any failure by you to comply with applicable laws and regulations, or (e) any acts or omissions of you or any third party. This paragraph shall survive the termination of this Agreement for any reason.

YOU AGREE YOUR USE OF THE SERVICE AND ALL INFORMATION AND CONTENT (INCLUDING THAT OF THIRD PARTIES) IS AT YOUR RISK AND IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF THE SERVICE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. WE MAKE NO WARRANTY THAT THE SERVICE (i) WILL MEET YOUR REQUIREMENTS, OR (ii) WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. FURTHER, WE MAKE NO WARRANTY THAT (i) THE RESULTS THAT MAY BE OBTAINED FROM THE SERVICE WILL BE ACCURATE OR RELIABLE, OR (ii) ANY ERRORS IN THE SERVICE OR TECHNOLOGY WILL BE CORRECTED. YOU AGREE THAT WE WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES RESULTING FROM THE USE OR THE INABILITY TO USE THE SERVICE INCURRED BY YOU OR ANY THIRD PARTY ARISING FROM OR RELATED TO THE USE OF, INABILITY TO USE, OR THE TERMINATION OF THE USE OF THE SERVICE, REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF BANK OF THE PACIFIC HAS BEEN INFORMED OF THE POSSIBILITY THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, YOU AGREE FURTHER THE BANK SHALL NOT BE LIABLE FOR ANY DAMAGES OTHER THAN THOSE CAUSED SOLELY AND DIRECTLY BY ITS GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, AND ITS LIABILITY SHALL IN NO EVENT EXCEED THE LESSER OF YOUR ACTUAL DAMAGES OR THE TOTAL IN FEES YOU PAID FOR THE USE OF THE SERVICE DURING THE SIX MONTH PERIOD PRIOR TO THE SUPPOSED ACT OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

**19. Intellectual Property** This Agreement does not transfer to you any ownership or proprietary rights in the Service or any associated software or any part thereof. We or our agents retain all intellectual property rights, title and interest in and to the Service and any associated software.

Neither you nor any user you authorize will (a) sell, lease, distribute, license or sublicense the Service; (b) modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile the Service or any part of it in any way for any reason; (c) provide, disclose, divulge or make available to or permit use of the Service by any third party; (d) copy or reproduce all or any part of the Service; or (e) interfere, or attempt to interfere, with the Service in any way.

**20. Termination** We may terminate or suspend the Service, or your use of the Service, immediately and at any time with or without notice to you. You may terminate your use of the Service at any time by giving notice to us. Your notice will not be effective until we receive your notice of termination as provided on the Mobile Deposit website page, as it may be amended from time to time, and we have had a reasonable time within which to act upon it. Notwithstanding termination, any Image transmitted through the Service shall be subject to this Agreement.

**21. Amendment** We may change this Agreement at any time. We may add new terms and conditions and we may delete or amend existing terms and conditions. We generally send you advance notice of the change as required by law. If a change is favorable to you, however, we may make the change at any time without advance notice. If you do not agree with the change you may discontinue using the Service. However, if you continue to use the Service, your continued use shall be deemed your acceptance of and agreement to the change.

**22. Severability** Any provision of this Agreement that is unenforceable shall be ineffective to the extent of such provision, without invalidating the remaining provisions of this Agreement. If performance of the Service would result in violation of any law, regulation, or governmental policy, this Agreement shall be deemed amended to the extent necessary to comply therewith.

**23. Entire Agreement** This Agreement, the Deposit Agreement, and the Mobile Deposit Website Information contain the entire agreement between the parties relating to the subject matter addressed herein, and supersede any prior or contemporaneous understandings or agreements, whether oral or written, between the parties regarding the subject matter contained herein.

**24. Assignment** This Agreement shall not be assigned or delegated by you without the prior written consent of the Bank.

**25. Governing Law** This Agreement, and your rights and our obligations under this Agreement, are governed by and interpreted according to the laws of the State of Washington and of the United States. In the event of any dispute arising out of or related to the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and collection expenses in addition to any other recovery. You and we agree any legal action related to this Agreement shall be filed and heard in Grays Harbor County, Washington, except as prohibited by applicable law.

**26. Electronic Signature.** This Agreement is an electronic contract that sets out the legally binding terms of your use of the Service. You indicate your acceptance of this Agreement and all of the terms and conditions contained or referenced in this Agreement by clicking on the "I Accept" button below in connection with your enrollment. This action creates an electronic signature that has the same legal force and effect as a handwritten signature. By clicking on the "I Accept" button, you accept the Agreement, and agree to the terms, conditions and notices contained or referenced therein. When you click on the "I Accept" button, you also consent to have the Agreement provided to you in electronic form. You have the right to receive the Agreement in non-electronic form.

**I Accept      I Decline**