



## BUSINESS ONLINE TERMS & CONDITIONS

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## **I. Introduction & Definitions**

### **INTRODUCTION**

This Business Online Banking Disclosures explains the terms and conditions for accessing accounts and conducting transactions at Bank of the Pacific via our secured Business Online Banking internet site(s). The disclosures contained in this document encompass a number of services offered by Bank of the Pacific including Services that may not be available or applicable to your Account(s).

### **DEFINITIONS**

The following words shall have the definitions stated for the purposes of this Agreement:

“Access ID” shall mean the identification provided to you by the Bank for accessing Business Online.

“Account(s)” shall mean any account(s) you access via Business Online.

“Disclosures” shall mean this document, the Bank’s Business Online Banking Disclosures.

“Authorized User” shall mean any employee, representative, or agent whom you have authorized to conduct transactions on your Accounts.

“Bank” shall mean Bank of the Pacific.

“Business Online” shall mean any secure banking internet sites maintained by the Bank.

“Business Day” shall mean all days except for Saturday and Sunday and holidays observed by the Federal Reserve Bank in San Francisco, which may change without notice.

“Company” shall have the same meaning as in your Business Online Application.

“Payment Order” shall mean a funds transfer initiated through Business Online’s wire transfer services.

“Services” shall refer to services accessible via computer through Business Online, such as electronic funds transfer services, account access, and account maintenance functions.

“You” or “your” shall mean your business, the Company, and any authorized signers or users of your Account(s).

“We,” “us,” or “our” shall mean the Bank.

### **ACCEPTANCE OF DISCLOSURES**

By accessing your Account(s) through Business Online, you agree to be bound by the terms and conditions of your Business Online application, any application(s) for Services, these Disclosures, and your Account(s). You agree to access and use the Services only for business or commercial purposes.

### **RELATION TO OTHER DISCLOSURES OR AGREEMENTS**

Your application(s) and these Disclosures are in addition to any other agreements and/or disclosures pertaining to your Accounts in general and other services provided by the Bank that are not addressed by these Disclosures.

### **MODIFICATION**

The Bank may, from time to time, introduce new Services or new features of the Services. By using those new Services or new features when they become available, you agree that such Services shall be subject to these Disclosures and the terms of any applicable agreement or application associated with the Services.

The Bank reserves the right to modify these Disclosures and to change the charges, fees or other terms described herein at any time. When changes are made, the Bank will notify you by electronic mail or physical mail at the address shown in our records at least (10) business days before the changes become effective. You will be deemed to accept any changes if you access or use any of the Services after the date on which the change becomes effective. You may also review the most current Disclosures on our web site. No change to these terms and conditions will affect any of your obligations to the Bank, including, without limitation, your obligation to pay us all amounts owed to the Bank from time to time.

### **NOTIFICATION BY E-MAIL**

By enrolling in Business Online, you consent to receive notices regarding Business Online and the Services, and updates to these Disclosures, via e-mail to the e-mail address we have in our files. Notification shall become effective upon our sending of the notification and not upon your receipt. In the event of any change to your e-mail address, you must notify us immediately to update our records.

### **BANK CONTACT INFORMATION**

You may contact the Bank through its website at [http://www.bankofthepacific.com/contact\\_us.php](http://www.bankofthepacific.com/contact_us.php), or by U.S. Mail or by phone at the following:

**Bank of the Pacific**  
1216 Skyview Drive  
Aberdeen, WA 98520  
1-888-855-8267

## **II. BUSINESS ONLINE**

### **APPLICABILITY**

The disclosures of this section apply to all Accounts enrolled in Business Online.

### **ELIGIBILITY**

Any Account that requires two or more signatures to make any transaction is not eligible for Business Online. You agree that any requirement of verifying 2 or more signatures on any item, such as checks, will not apply to electronic transfers, and we will have no liability when making these kinds of transfers without the requisite verification. This means that any person who is an authorized signer of your account is authorized by you to individually make electronic transfers, even though that person's authority to transfer or withdraw funds from your account by some other means (e.g. check) must be exercised jointly with 1 or more other persons. This provision controls and takes precedence over any conflicting provision in any other agreements you may have with us.

### **COMPUTER REQUIREMENTS**

In order to use the Online Banking service, you must have at least one account with the Bank. To access your account(s) via the Internet, you must have World Wide Web access via a Secure Internet Service Provider. Your Internet browser must be configured for TLS encryption. Your information will be encrypted when using this form while in transit between your browser and Bank of the Pacific. If you are using an older browser or receive an error message when you attempt to login, you may need to upgrade your browser software. NOTE: attempts are made to test on the newest versions of browsers; however, release timing may not permit testing on new browsers as they are released to the market. In addition, you must have access to a computer, all software and necessary telephone lines, and an operating system capable of supporting all of the above. Please see our website at [www.bankofthepacific.com](http://www.bankofthepacific.com) for a list of recommended browsers that are supported by online banking.

### **VIRUS/MALWARE PROTECTION**

The Bank is not responsible for any electronic virus that you may encounter using Online Banking. We encourage you to routinely scan your computer using a reliable virus and malware protection product to detect and remove viruses and malware. If undetected and un-repaired, a virus can corrupt and destroy your programs, files and hardware and malware can allow unauthorized access to your computer. Ensure that your computer is configured to download and install critical operating system and application security patches or prompt you when they are available.

### **LOGIN ID AND PASSWORD**

During enrollment you will have the opportunity to choose a desired Login ID; however the Login ID must be unique to our system. If the login ID you have selected is not unique, we will assign one to you. You may change your Login ID or password at any time under preferences/security. Your Login ID, which cannot be used without your password, will provide you with access to all of the Accounts you have instructed us to make available to you through online banking.

### **SECURITY AND PROTECTING YOUR ACCOUNT**

The Bank is strongly committed to protecting the security and confidentiality of its Company's account information and uses a variety of techniques to help secure Business Online and related Services, including the following:

- i) Access may be restricted to web browsers capable of high security standards.
- ii) Your account numbers are never displayed in full - only the last 4 digits can be viewed.
- iii) Each Authorized User must have a valid Login ID and password to login.
- iv) After five unsuccessful login attempts, you may be locked out of your Account(s) pending identity verification.
- v) You may be automatically logged off of Business Online after a period of inactivity.
- vi) Multi-factor authentication is enabled on each online user.

For security purposes, we recommend that you memorize your password and do not write it down. You may be periodically required to change your password and we also recommend that you change your password regularly to avoid misappropriation by a third party. You may change your password at any time using our Business Online site.

You are responsible for keeping your password and Account data confidential and otherwise protecting against unauthorized access to Business Online. When you give someone your Login ID and password, you are authorizing that person to use Business Online and related Services. You are responsible for all transactions performed using Login ID(s) and password(s) assigned to you, even if you did not intend or authorize the transactions. If you become aware of any unauthorized transactions, you agree to notify the Bank immediately. See Unauthorized Transactions, below. You agree to immediately notify the Bank if your login or password information has been or may have been compromised.

You are solely responsible for establishing, maintaining, and following security best practices applicable to the operating systems and applications that you utilize and to ensure that your systems are intact, secure and confidential, including, without limitation, Microsoft's recommended practices for securing systems with Microsoft operating systems and applications.

**FEES AND CHARGES**

Please refer to Bank of the Pacific's business fee schedule for applicable online banking fees. A current fee schedule is available on the Bank's website at [www.BankofthePacific.com](http://www.BankofthePacific.com) or may be requested from your local branch.

Unless otherwise specifically indicated, all fees shall be deducted at the time of service from a payment account you designate at the Bank. In the event your payment account has insufficient funds to cover any fees, the Bank may deduct the fees from any other Account you have at the Bank. If you close the designated payment account, you must notify the Bank and identify a new payment account for the selected Services. Additionally, if you close all of your Accounts, you must notify the Bank and cease all use of the Services. If fees cannot be collected from any of your Accounts, the Bank may cancel all or some of your Services at its sole discretion. After cancellation, the Bank may reinstate some or all of the Services, at its sole discretion, if you deposit sufficient funds in your Accounts to cover any accrued fees and pending transfers or debits.

You are solely responsible for any telephone, Internet Service Provider charges, or other connection fees incurred when using Business Online.

**ACCESS**

In general, you will be able to access Business Online seven (7) days a week, twenty-four (24) hours a day. However, the Bank does not warrant that Business Online or the Services will be available at any given time. System maintenance, computer failure, interruptions in internet service, or other circumstances beyond the Bank's control may make Business Online or related Services unavailable. When Business Online is unavailable, you may contact your local branch during normal business hours for account assistance.

**TRANSACTION PROCESSING**

All transactions must be submitted to the Bank by the cut off times noted below to allow processing by the date specified. All times are Pacific Standard Time.

Account Transfers SAME Business Day processing	6:00pm
Loan Payments SAME Business Day processing	6:00 pm
Stop Payments SAME Business Day processing	Anytime
ACH or Tax Payments NEXT Business Day processing	4:00 pm
Domestic Wire Transfers	2:00 pm
Mobile Deposits	5:00 pm

#### **LIMITATION OF BANK'S LIABILITY FOR FAILURE TO COMPLETE TRANSACTIONS**

The Bank will not be liable for any transaction if:

- i) you do not have enough money in your account to complete the transaction;
- ii) a legal order prohibits withdrawals from your account;
- iii) your account is closed or has been frozen;
- iv) the transaction would cause your balance to go over the credit limit for any credit arrangement set up to cover overdrafts;
- v) you, or anyone you allow, are suspected of committing a fraud or violate any law or regulation in connection with your Account, Business Online, or the Services;
- vi) any electronic terminal, telecommunication device or part of the electronic fund transfer system is not working properly;
- vii) you did not provide us with complete and correct payment or transfer information;
- viii) you did not properly follow the instructions for use of Business Online or the Services;
- ix) you knew that Business Online and/or the Services were not operating properly at the time you initiated the transaction or payment;
- x) there is a postal delay;
- xi) circumstances beyond our control (such as fire, flood or improper transmission or handling by a third party) that prevent, hinder or delay the transaction;
- xii) other exceptions not specifically mentioned here.

#### **LIMITATION OF BANK'S LIABILITY FOR DAMAGES FOR FAILING TO PROCESS TRANSACTION**

If we fail or delay in processing a transaction pursuant to your instructions, or if we process a transaction erroneously, unless otherwise required by law, our liability shall be limited to interest on the amount which we failed to timely pay or transfer, calculated from the date on which the payment or transfer was to be made until the date it was actually made or you canceled the transaction. We may pay such interest either to you or the intended recipient of the payment or transfer, but in no event will we be liable to both parties, and our payment to either party will fully discharge any obligation to the other.

If we make a payment or transfer in an erroneous amount which exceeds the amount per your instructions, or if we permit an unauthorized payment or transfer after we have had a reasonable time to act on a notice from you of possible unauthorized use as described above, unless otherwise required by law, our liability will be limited to a refund of the amount erroneously paid or transferred, plus interest thereon from the date of the payment or transfer to the date of the refund, but in no event to exceed 60 days' interest.

If we become liable to you for interest compensation under these Disclosures or applicable law, such interest shall be calculated based on the average federal funds rate at the Federal Reserve Bank in the district where the Bank is headquartered for each day interest is due, computed on the basis of a 360-day year.

**UNLESS OTHERWISE REQUIRED BY LAW, IN NO EVENT WILL THE BANK BE LIABLE TO YOU FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF WE ARE ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

#### **LIMITATION OF BANK'S LIABILITY FOR TRANSACTIONS BY AUTHORIZED USERS**

When you give someone a Login ID or password you are authorizing that person to use Business Online, and you are responsible for all transactions the person performs. All transactions that person performs, even those transactions you did not intend or want performed, are authorized transactions that the Bank is entitled to honor. If you notify us that the person is no longer authorized, the Bank will take commercially reasonable steps to prevent further transactions by the Login ID associated with that person. Transactions that you, or someone acting with you, initiate with fraudulent intent are also authorized transactions. For your protection, sign off after every Business Online session and close your browser to ensure confidentiality.

We may suspend or cancel your Login ID, password, or access to Business Online and all related Services without receiving notice from you if we suspect your Login ID is being used in an unauthorized or fraudulent manner.

#### **UNAUTHORIZED TRANSACTIONS**

Notify us AT ONCE if you believe your password has been lost or stolen, or if you believe that an unauthorized or fraudulent transaction has occurred or may occur without your permission. You could lose all the money in your

account (plus your maximum overdraft line of credit).

For **Consumer Accounts**: If your password has been compromised and you notify us within two (2) business days of discovering the loss or misappropriation, your liability is limited to \$50. If you do NOT tell us within 2 business days after you learn of the loss or theft of your password but within 60 calendar days after transmittal of a statement showing the first unauthorized transfer and we can prove we could have stopped someone from using your password without your permission if you had told us, you could lose as much as \$500. If you do NOT tell us more than 60 calendar days after you learn of the loss or theft of your password and we can prove we could have stopped someone from using your password without your permission if you had told us, your liability is not limited until we are notified.

#### **REVIEW OF STATEMENTS**

You are responsible for promptly examining your statement each statement period and reporting any irregularities to us. Each account statement will be considered to correctly reflect your transactions, such as deposits, withdrawals, credits, refunds, imposition of fees, interest or dividends, and other additions and subtractions to your Account, unless you notify us in writing within certain time limits after the statement that incorrectly reflects your transactions is made available to you. We will not be liable for any check that is altered or any signature that is forged unless you notify us within thirty (30) calendar days after the statement and the altered or forged item(s) are made available. Also, we will not be liable for any subsequent items paid, in good faith, containing an unauthorized signature or alteration by the same wrongdoer unless you notify us within twenty (20) calendar days after the statement and first altered or forged items were made available. You must report any other Account problem including encoding errors, and errors involving additions or subtractions (debits and credits) not otherwise covered herein, including electronic transactions not covered by the Electronic Fund Transfer Act, within sixty (60) calendar days.

For **Consumer Accounts**: If your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

#### **REPORTING DISCREPANCIES**

When you report a problem or discrepancy, please: (i) tell us your company name and account number(s); (ii) describe the error or the transaction you are unsure about and explain why you believe it is in error or what additional information you need; (iii) tell us the dollar amount of any suspected error; and (iv) for a bill payment, tell us the number of the account used to pay the bill, the applicable payee name and account number, the date the payment was sent, the payment amount and the payment reference number. Generally speaking, we will tell you the results of our investigation within ten (10) business days, or twenty (20) business days in the case of point of sale or international transactions, after we hear from you. However, we may take up to forty-five (45) days, or ninety (90) days in the case of point of sale or international transactions, to investigate your complaint or question. In this case, we may provisionally credit your account so that you have use of the money during the time it takes us to complete our investigation. If you fail to provide your complaint or question in writing within ten (10) business days of a request from us to do so, we reserve the right to not credit your account. If we confirm an error, we will correct your account record within one (1) business day. If we determine that there was no error, we will send you a written explanation within three (3) business days after we conclude our investigation and will debit any interim amounts credited to your account. You may request copies of any documents that we use in our investigation.

**THE BANK WILL HAVE NO LIABILITY TO YOU FOR ANY TRANSACTIONS MADE USING YOUR ACCESS ID OR PASSWORD THAT OCCURS BEFORE YOU HAVE NOTIFIED US OF POSSIBLE UNAUTHORIZED USE AND WE HAVE HAD REASONABLE OPPORTUNITY TO ACT ON THAT NOTICE.**

#### **ELECTRONIC MAIL (E-MAIL)**

Confidential information, such as account number and balances, should not be sent to the Bank via e-mail, as it is typically unsecured. Correspondence with the Bank regarding Business Online Services, or your accounts should be made by telephone, in writing or by using the secure message feature within online banking. You cannot use e-mail to initiate any Service transactions. All such transactions must be initiated using the appropriate functions within the Business Online site or by calling your branch of account.

The Bank will not be liable for any errors, omissions, claims, or problems of any kind arising from or relating to any e-mail communication initiated by you.

## **PRIVACY POLICY**

The Bank does not disclose nonpublic, personal information collected from you except in accordance with the Bank's Privacy Policy and in accordance with the Gramm Leach Bliley Act of 1999 and other applicable state and federal law. For a complete copy of our Privacy Policy please see our website at [www.bankofthepacific.com](http://www.bankofthepacific.com) or contact the Bank.

## **III. ONLINE WIRE TRANSFERS**

### **APPLICABILITY**

The disclosures of this section apply to Accounts enrolled to conduct Online Wire Transfers.

### **FUNDS TRANSFER RISK**

Your instruction to transfer funds from your account to a third party is a Payment Order. By giving Authorized User(s) the ability to initiate Payment Orders, Company assumes certain risks and responsibilities with respect to the actions of that Authorized User(s). Company warrants to the Bank and agrees that no individual(s) shall be allowed to initiate Payment Orders in the absence of proper supervision and adequate safeguards such as dual control. Company assumes full responsibility for any and all loss, liability and damages associated with Payment Orders originated by instructions given to the Bank by Authorized User(s). Company agrees to regularly and promptly review all Payment Order requests. Company reviews shall be conducted by persons other than Authorized User(s).

Consumers in the United States who electronically transfer funds to consumers or business recipients in foreign countries are sending a remittance transfer, which has the meaning given in Subpart B of Regulation E (12 CFR §1005.30, et seq.). If your funds transfer is a remittance transfer, additional rules may apply.

### **SECURITY PROCEDURES**

The Bank may establish security procedures to verify the authenticity of a Payment Order. You will be notified of the security procedures to be used for the purpose of verifying a Payment Order or a communication amending or cancelling a Payment Order issued by you. The security procedures are not used to detect an error in the transmission or content of the Payment Order. You acknowledge that the security procedure may be deemed commercially reasonable pursuant to Section 4A-202(c) of the Uniform Commercial Code.

Each Authorized User is responsible for the confidentiality of his or her unique password. Dual control and/or authorization tokens are required as an additional security feature. The Bank may execute any Payment Order received through online banking initiated with an Authorized User(s) Login ID and password, thereby assuming that such Payment Order is authorized. Company is responsible and assumes all liabilities in connection with a Payment Order or communication amending or cancelling a Payment Order, whether or not authorized, that is issued in your name and accepted by the Bank in compliance with the agreed-upon security procedures, including where a valid Login ID and password are used. Company agrees to notify the Bank immediately if it suspects unauthorized Payment Orders. The Bank may make and retain for ninety (90) days after execution a recording of all verbal or electronic Payment Orders.

### **INITIATING TRANSFERS**

Company's Authorized User(s) may direct the Bank to execute a Payment Order from any of Company's authorized accounts to any other bank or at another institution up to the limit authorized by the Company. The authorized accounts and authorized limit are set forth in the Client & Administrator Capability Sheet. Templates for repetitive payment orders are recommended to ensure accuracy and security.

Payment Orders, and amendments and cancellations thereto, properly initiated by the Company will be accepted during normal Business Days of the Bank.

### **AUTHORIZATION TO CHARGE ACCOUNT**

Company authorizes the Bank to charge Company's accounts for the amount of any Payment Orders initiated by Company or any of its Authorized Users.

### **AMENDMENT OR CANCELLATION**

Upon the Bank's receipt of a properly made request by the Company or its Authorized User(s) to amend or cancel a Payment Order(s), the Bank agrees that i) if the Payment Order(s) is in the Bank's possession and has not been executed, the Bank will make reasonable efforts to amend or cancel the Payment Order(s) as provided, or ii) if the Payment Order(s) is no longer in the Bank's possession or has been executed, the Bank will make reasonable efforts



to amend or reverse the transmitted Payment Order(s). The Bank makes no representations or warranties regarding its ability to amend or reverse transmitted Payment Order(s).

#### **HONORING PAYMENT ORDERS**

The Bank will honor a Payment Order(s) only if the Authorized User(s) initiating the Payment Order(s) provides the Bank with information as required by the Bank. The Bank will be under no obligation to honor, either in whole or part, any Payment Order if:

- i) The Payment Order exceeds Company's collected and available funds on deposit with Bank;
- ii) The Bank has reason to believe the Authorized User initiating the Payment Order may not, in fact, be authorized by Company;
- iii) The Payment Order involves funds subject to a hold, dispute, or legal process preventing their withdrawal; or
- iv) The payment Order is not in accordance with requirements stated in these Disclosures.

#### **IDENTIFICATION OF INTERMEDIARY OR BENEFICIARY'S BANK**

If a Payment Order identifies an intermediary bank, the beneficiary's bank or the beneficiary by name and an account or other identifying number, the Bank may act solely on the basis of such identifying number.

#### **ROUTING OF PAYMENT ORDER**

Company is responsible for full routing instructions. The Company agrees that in executing any Payment Order the Bank may make use of any correspondents, intermediary banks, agents, sub-agents, funds-transfer and communication systems that the Bank deems reasonable under the circumstances. If a Payment Order designates an intermediary bank and/or funds-transfer system, you agree that, where appropriate, the Bank may select a different intermediary bank and/or funds-transfer system on your behalf and the Bank shall have no liability with respect to such selection. To the fullest extent permitted by law, correspondents, agents, sub-agents, systems or intermediary banks shall be deemed to be your agents and the Bank shall not be under any liability for any errors, negligence, suspension or default of any of them, all such risks being borne by you.

#### **EXECUTING PAYMENT ORDERS**

The Bank will execute a Payment Order on the day that the Payment Order is received, provided that the Payment Order is received by the Bank on a Business Day by the applicable cutoff time (See Section II: **ACCESS AND TRANSACTION PROCESSING**) and provided that there are available funds on deposit in the Company's Account. In attempting to execute Payment Order, the Bank shall use reasonable efforts to utilize the means of transmission specified in Company's request, but in no way shall the Bank be limited to such means of transmission.

The Bank will notify Company if it cannot execute a Payment Order due to a problem beyond the Bank's reasonable control. In the event the beneficiary's bank is not able to receive Payment Orders via the treasury payment system, Company authorizes the Bank to send the Payment Order to an intermediary bank for further credit to beneficiary's bank. The Company must designate an intermediary bank if one is needed. In the event the Company furnishes an incorrect ABA routing number, the Bank is not responsible for the incorrect routing of funds.

#### **INCOMING PAYMENT ORDERS**

Bank assumes no liability except as set forth herein for accepting incoming Payment Orders, and Company agrees to indemnify and hold the Bank harmless from and against any claim arising from or in connection with the receipt of an incoming Payment Order.

#### **NOTIFICATION**

Company will be notified by telephone, e-mail, or regular mail if execution of a Payment Order fails. The Bank shall have no obligation to re-process a failed Payment Order.

#### **NOTIFICATION OF RECEIPT OF ACH PAYMENTS**

Under the operating rules of the National Automated Clearing House Association that are applicable to ACH transactions involving your account, the Bank is not required to give next day notice to you of receipt of an ACH item, and the Bank will not do so. However, the Bank will continue to notify you of the receipt of payments in the periodic statements the Bank provides to you. Credit given by the Bank to you with respect to an ACH credit entry is provisional until the bank receives final settlement for such entry through a Federal Reserve Bank. If the Bank does not receive such final settlement, you are hereby notified and agree that the Bank is entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you shall not be deemed to have paid you the amount of such entry.

**LIMITATION OF BANK'S LIABILITY**

In addition to the liability limitations specified in Section II above, the Bank shall not be liable for any loss arising, directly or indirectly from a wire transfer due to:

- i) Any inaccuracy, act or failure to act on the part of any person not within the Bank's control;
- ii) The negligence or misconduct of Company or any Authorized User, or any agent or employee of Company;
- iii) Any ambiguity in the instructions given to the Bank;
- iv) Any other error, failure to delay in the transmission of the payment order which is caused by strikes, civil unrest, and inoperability of communication facilities or circumstances beyond the Bank's reasonable control or;
- v) Any acts or omissions of intermediary banks involved in the funds transfer; or
- vi) The Bank's reliance on instructions from persons designated as Authorized Users.

**FEES**

Company may be liable for and will pay such fees as the Bank may from time to time establish for funds transfer services together with any direct or indirect transfer charges incurred by the Bank. The fees and charges may be assessed directly against Company's account(s) with the Bank or may be charged indirectly to Company's analysis account.

**IV. ACH SINGLE PAYMENTS & TAX PAYMENTS (PREFUNDED)****APPLICABILITY**

The disclosures of this section apply to Accounts enrolled to conduct ACH Single Payments and Tax Payments.

**RULES**

The Bank and the Company agree that all Payment Orders, transfers and other Services will be subject to and will comply with the laws of the United States, including without limitation, any applicable federal laws and regulations, the operating circulars of the Federal Reserve System, and the operating rules of networking associations and systems, such as the rules of the National Automated Clearing House Association and any regional clearinghouse that we use from time to time to provide the Services, (the "Rules") as amended from time to time. The Company agrees to comply with and be bound by the Rules. Terms utilized in this section shall be interpreted with the meaning proscribed by the Rules.

**EVIDENCE OF AUTHORIZATION**

Company shall obtain all consents and authorizations required under the rules and shall retain such consents and authorizations for two years after they expire.

**AUDIT**

Bank of the Pacific maintains the right to audit Company to ensure compliance with this Agreement and the NACHA Rules

**TRANSMISSION OF ENTRIES: SECURITY PROCEDURES.**

The Company authorizes the Bank to transmit all entries received in good faith by the Bank from the Company in accordance with the terms of this agreement, and to charge a specified Company account for the amount of the transmitted ACH dollar amount. Dual control and/or authorization token are required as an additional security feature on ACH Single Payments.

**DEADLINE FOR ENTRIES**

In order to meet ACH deadline windows at The Federal Reserve Bank, the following deadlines have been established: All entries must be received by the Bank (from Company) by 4:00 PM Pacific Standard Time one (1) Business Day prior to the Effective Entry Date of the Entries.

**FINANCIAL INSTITUTION OBLIGATIONS**

In a timely manner in accordance with the Rules, the Bank will process, transmit, and settle for the entries received from the Company, that comply with the terms of the Agreement.

**WARRANTIES**

Without limiting the foregoing, the Company warrants and agrees that (a) each ACH entry is accurate, timely, and all

required information is included; (b) the Company will comply with the terms of the Rules and Regulation E (as provided at Account opening) if applicable, and shall otherwise perform its obligations under this Agreement in accordance with all applicable regulations and laws of both the United States and State of Washington. The Company shall indemnify the Bank against any loss, liability or expense (including attorney's fees and expenses and IRS penalties) resulting from or arising out of any breach of any of the foregoing warranties or agreements.

**SETTLEMENT**

The Company will maintain an Account with the Bank at all times during the term of this Agreement. The Company will maintain in the Account as of the applicable transmission date collected funds sufficient to cover all credit entries initiated by it. The Company authorizes the Bank to debit on transmission date its Account at the opening of business on the applicable settlement date in the amount of each entry.

**CANCELLATION OR AMENDMENT**

Company shall have no right to cancel or amend any Entry after its receipt by the Bank. However, The Bank shall use reasonable efforts to act on a request by Company for cancellation of an Entry prior to transmitting it to the ACH or, in the case of an On-Us Entry, prior to crediting a Receiver's account, but shall have no liability if such cancellation is not affected.

**REJECTION OF ENTRIES**

The Bank shall reject any entry, including an on-us entry, which does not comply with the requirements of the NACHA operating rules and may reject any entry if the Company is not otherwise in compliance with the terms of the Agreement. The Bank shall notify the Company by telephone and/or in writing of such rejection no later than the business day such entry would otherwise have been transmitted by the Bank to the ACH.

**NOTICE OF RETURNED ENTRIES**

The Bank shall notify the Company in writing of the receipt of a returned entry from the ACH no later than one day following receipt. The Bank shall credit or debit the Offset Account for the amount of each On-Us rejected Entry or Entry returned by the Receiving Depository Financial Institution, provided that the Bank obtained payment for the returned Entry from such Receiving Depository Financial Institution. Such credit or debit shall be made as of the day of such receipt by Financial Institution.

The Bank shall have no obligation to re-transmit a returned entry if the Bank complied with the terms of this Agreement with respect to the original entry.

**NOTICE OF CHANGE**

The Bank shall notify Company of all notifications of change received by Financial Institution relating to Entries transmitted by Company by mail no later than 2 business days after receipt thereof.

Upon receipt of a Notice of Change, you must make the changes specified in the notice within six Banking Days or prior to initiating another Entry to the Receiver's account, whichever is later.

**REVERSALS**

All returns and reversals will be done in accordance with the Rules. According to the National Automated Clearing House Association (NACHA) rules, reversals must take place within five days after the Effective Entry Date of the Entries. Reversals older than five days after the Effective Entry Date are not allowed. All reversal must be initiated by the Bank.

**PERIODIC STATEMENT**

Transaction history can be viewed online, however, the periodic statement issued by the Bank for the Company's Account will reflect entries credited and debited to the Company's Account. The Company agrees to notify the Bank within a reasonable time not to exceed 60 days after the Company receives a periodic statement of any discrepancy between the Company's records and the information in the periodic statement.

**RECEIVER ALLEGED ERRORS**

Company agrees that any Receiver alleged error would be the responsibility of the Company. Company further agrees to act on and resolve any error in a timely manner, as described in Regulation E. The Bank is indemnified from any loss liability or expense (including but not limited to attorneys' fees and expenses) resulting from or arising out of any Regulation E dispute between Company and Receiver.

## **INCONSISTENCY OF NAME AND ACCOUNT NUMBER**

Company agrees that if an Entry describes the Receiver inconsistently by name and Account number, the Receiving Depository Financial Institution shall post Entry on the basis of the Account number, even if it identifies a person other than the named Receiver, and that Company's obligation to pay the amount of the Entry to the Bank is not excused in such circumstances. Company shall indemnify the Bank against any loss, liability or expense (including, but not limited to bank fees, attorneys' fees, and expenses) resulting from any Entry transmitted to the Bank containing such inconsistency.

## **PRE-NOTIFICATIONS**

When acting as an Originator, it is recommend that you originate a pre-notification or zero dollar entry to the account to ensure the account information is accurate. Submission of a pre-notification is not required. In accordance with the "Rules", if you do elect to originate a pre-notification to an account, you must originate this entry at least three business days prior to the Effective Entry Date of the first transmission of funds.

## **V. CHECK & ACH POSITIVE PAY SERVICE**

### **APPLICABILITY**

The disclosures of this section apply to Accounts enrolled in Check and/or ACH Positive Pay Service.

### **DESCRIPTION OF SERVICE**

The Positive Pay Service can be used to identify fraudulent checks and ACH items attempting to clear Account(s) that you enroll in Check and/or ACH Positive Pay Service. With the Check Positive Pay Service you will submit issued check data (the "Checks Issued File" or the "File") to us by established deadlines. We will compare the checks presented for payment to the information you have provided about the checks you have issued. When a check is presented that is not included in or does not match your issued check information, we will notify you and you must authorize us to pay or return the check by the time required according to the Processing Schedule.

With the ACH Positive Pay Service you will define all of the pre-authorized ACH transaction rules for an account. An ACH authorization rule can include the originating company, standard entry class, transaction type (debits and/or credits), and maximum authorized dollar amount. If an unauthorized ACH item posts to an account, the rules determine whether the item requires pay/return decision and an alert is sent to the client via email that unauthorized activity has occurred.

### **TESTING AND DELIVERY OF ISSUED ITEM DATA**

- i) Testing of Issued Item Data – Company will provide to the Bank applicable test data, including, but not limited to, issue file formats and checks, for this service by a date agreed to by Bank and Company, prior to the first day that the Positive Pay service is to be performed. Bank will provide a file processing type in the format required by the Company to upload issued check files. Once the file type is formatted, Company will be asked to upload a listing of all checks outstanding.
- ii) Delivery of Production Issue Data – Prior to an initial live date of Positive Pay processing, Company shall upload a minimum of sixty (60) days' worth of issued items into the Positive Pay Service.
- iii) Method of Issued Item File Delivery – Company understands that the method available for the transmission of its Issued Items file to Bank is via Business Online. Company agrees to use the Business Online for file transmission. A diskette can be delivered to the Bank as a backup method.

### **ACH AUTHORIZATION RULES**

- iv) Transaction Identification – Bank will assist Company with a listing of all ACH Transactions that have cleared the account within the past 60 days.
- v) Method of Rule or Filter Block – Company shall identify and define the rules for all pre-authorized ACH Transactions and/or define the filter blocking for all or specific standard entry class codes. Company agrees to use the Business Online for accessing the Positive Pay Service.
- vi) Method of Notification – Company will be alerted via email of their exceptions.

### **EXCEPTION ITEM PROCESSING**

- i) Items contained in Company's issued items file will be compared against items presented to the Bank for

payment. Items presented for payment will include all items received by Bank in cash letters from the Federal Reserve Bank, correspondent and other banks and/or through the Bank's paying and receiving teller operation. When a discrepancy between a posted item and an issued item is found, the item will be identified as a positive pay exception. Company will be notified via email of an exception item requiring a pay/return decision. A pay/return decision must be made by the Company through the Online Positive Pay Service by the established deadline. Once the decisions are made, the bank will process the item in question according to the instructions provided by the Company.

- ii) Should Bank find a discrepancy in an item(s) presented for payment through its paying and receiving teller operation, the Bank will make every attempt to notify Company by telephone, e-mail and/or by facsimile communication to obtain the Company's decision as to whether the item(s) in question should be processed or rejected. Should the Bank be unable to contact Company for a disposition on a presented item, Company's standing order or default decision will be in accordance with the Return Default Addendum.
- iii) Authorization Rules and filters will be compared against ACH items presented to the Bank for payment. Items presented for payment will include all items received by Bank in cash letters from the Federal Reserve Bank, correspondent and other banks. Based on the established method of notification, unauthorized ACH transactions or transactions matching the filter criteria will become an exception that requires a pay or return decision by the Company or the Company can choose to receive an Email Notification Only. Exception items will be presented to the Company for review and to make a pay/return decision on the item. Once the decisions are made, the bank will process the item in question according to the instructions provided by the Company.

#### DEADLINES

- i) Issued Items File: Company shall transmit its Issued Items file to Bank not later than 6:00 pm Pacific Standard Time on any banking day in which it issues or voids checks. Should Company fail to transmit file by this time, or fail to transmit file at all, bank shall not be responsible for paying or returning any items that would have been included in the Issued Items file.
- ii) Authorization - Company shall set up any filter/block or rule no later than 5:00 pm Pacific Standard Time on any banking day. Should Company fail to modify or set up the ACH filter, block, or rule by this time, bank shall not be responsible for paying or returning any item per the current positive pay instructions.
- iii) Exception Item Notification: The exception items will be available to Company no later than 8:30 am each Banking Day that Company has exceptions. Company must make their Pay/Return decisions through the Online Positive Pay Service no later than 1:00 pm. If a Company fails to make the decision by 1:00 pm, the item will be paid or returned in accordance with the Company's standing order or default decision.

#### PROCESSING SCHEDULE

<u>Method of Delivery</u>	<u>File Submission Deadline</u>
Online Transmission	not later than 6:00 p.m. Monday through Friday
<u>Notice</u>	<u>Deadline</u>
Exception Notification to Client	not later than 8:30 a.m. Monday through Friday
Pay/Return Decision to Bank	not later than 1:00 p.m. Monday through Friday

#### BANK CONTACT INFORMATION

Contact information for the Bank's positive pay service is:

Contact	<u>Electronic Banking Department</u>
Bank	<u>Bank of the Pacific</u>
Street Address	1216 Skyview Drive
City/St	<u>Aberdeen, WA 98520</u>
Telephone Number	<u>360-537-4090 option 1</u>
Fax	<u>360-532-1150</u>
E-mail	<u><a href="mailto:ebanking@bankofthepacific.com">ebanking@bankofthepacific.com</a></u>

## **SECURITY PROCEDURES**

The Company agrees that the use of the Positive Pay service shall be carried out in accordance with, and subject to the security procedures established by the Bank and as are in effect from time to time. The Company further agrees that the security procedures are being utilized in connection with Business Online Banking selected by the Company. The Company acknowledges it has been advised as to the security procedures in effect at the time of execution of this Agreement. The Company agrees that Bank shall be entitled to modify or alter such security procedures, in whole or in part, at any time and that Company will be required to comply with the security procedures as modified or altered in order to continue to use Positive Pay under this agreement. The Company agrees to establish prudent security standards and policies that include proper safeguards to protect the confidentiality of all Login IDs and passwords that are assigned to the Company for initiating transactions using this system. The Bank may rely upon the accuracy and validity of any Positive Pay Issued File or Exception Item decision request initiated, or purported to be initiated by the Company to the Bank, and shall not be liable for any costs or damages incurred by the Company or any other person in connection with any unauthorized Issued Items list or Exception Item decision.

## **LIMITATION ON LIABILITY**

Company agrees that Bank shall not be liable for any item paid by Bank that either (i) matched the Issued Items File or (ii) if the item appeared on the Exception Items Report and was indicated as a valid item. Company further agrees that Bank shall not be liable for any item returned by Bank that did not match the Issued Items File and either (i) appeared on the Exception Items Report and was not indicated as a valid item, or (ii) appeared on the Exception Item Report and was indicated as an invalid item.

Bank and Company explicitly agree that any item paid by Bank as provided herein shall be deemed "properly payable" as that term is used in Article 4, Section 4-401 of the Uniform Commercial Code and any item returned by Bank as provided herein shall be deemed a rightful dishonor for purposes of Article 4, Section 4-402 of the Uniform Commercial Code. Any loss resulting from such payment or dishonor shall be borne by Company.

## **VI. OTHER SERVICES**

### **APPLICABILITY**

These disclosures in this section apply only to Accounts enrolled in Bill Payment Service or Stop Payment Service.

### **BILL PAYMENT SERVICE**

The Bill Payment service allows you to schedule bill payments through Business Online. The Bank does not provide the service directly. Instead, the Bank has entered into an agreement with a bill payment provider to provide the bill payment services directly to you. Subject to any limitations on usage imposed by regulators, the Bank, or bill payment providers, you may arrange, at your option, for the payment of your current, future and recurring bills from a checking account or a money market checking account. You may pay any merchant or individual approved by the bill payment provider; however, the amount of any individual payment may not exceed \$99,999.99.

While payments are initiated by you electronically, they are ultimately paid via an automated clearinghouse (ACH) network or by a paper check. Payments delivered over an ACH network are governed by the rules and performance standards of that network. Funds for bill payments will be withdrawn from your Account on the applicable payment date. Payments made by paper check will be withdrawn from your Account when deposited by the payee.

The monthly bill payment fee covers service for the prior month and is effective upon your enrollment in the bill payment Service. The monthly bill payment fee will be charged to your account regardless of whether or not any bill payments are made during the applicable month.

### **STOP PAYMENT SERVICE**

The Company acknowledges that the Stop Payment feature of the Services is an alternate entry system for issuing Stop Payment Orders. When utilizing this feature, Company warrants that the information describing the check including (i) its exact amount, (ii) the check number (iii) the exact name of the payee, and (iv) the scheduled transfer date is correct. Failure to provide correct and complete information may make it impossible for us to stop payment. Company agrees that the Stop Order must be received by the Bank within a reasonable time for the Bank to act on the order prior to final payment of the check. A Stop Payment Order received by the Bank using this service will be accepted as if it were in written form and will be effective for six (6) months only, and will expire automatically at that time, without further notice, unless specifically renewed prior to expiration. You agree that it is commercially reasonable

for the Bank to pay on an item for which a stop payment order has expired without further notice or approval. Stop Payments on ACH/EFT transfers are not accepted through the online service and must be placed by contacting the branch of account. A Stop Payment cannot be placed on a debit card (POS) transaction.

When the Company elects to execute Stop Payment requests through Business Online, the stop payment will be automatically posted to the Bank's main computer system. It is the customer's responsibility to review the account history to determine if the check has processed prior to submitting this stop payment request in order to avoid an unnecessary fee. If a stopped item has already been paid prior to the Bank receiving the request, the Bank shall not be liable for any loss incurred by the Company arising from the event. The Company agrees to indemnify and hold us harmless from and against any loss incurred by the Bank as a result of our paying a check if any of the information relied upon in the Stop Payment Order is incorrect or incomplete (or as a result of our not paying a check for which a Stop Payment Order is in effect).

## **VII. MISCELLANEOUS**

### **APPLICABILITY**

The disclosures in this section apply to all Accounts enrolled in Business Online.

### **DAMAGES DISCLAIMER**

In addition to the terms previously disclosed, the Bank is not responsible for any losses, errors, injuries, expenses, claims, attorney's fees, interest or other damages (including lost profits or savings), whether direct, indirect, special, punitive, incidental or consequential, (collectively, "Losses") caused by Business Online or the use of the Services, unavailability of the Business Online or the Services, or in any way arising out of the installation, use or maintenance of your personal computer hardware or software, including any software provided by the Bank or one of its suppliers, or for any claim by a third party. In addition, the Bank disclaims any responsibility for any electronic virus(es) you may encounter after installation of such software or use of Business Online or the Services. Without limiting the foregoing, neither the Bank nor its suppliers shall be liable for any: (i) failure to perform or any losses arising out of an event or condition beyond their reasonable control, including but not limited to communications breakdown or interruption, acts of God or labor disputes; or (ii) the loss, confidentiality or security of any data while in transit via the Internet, communication lines, postal system or ACH network.

### **WARRANTY DISCLAIMER**

The Bank and its suppliers provide Business Online and the Services from their own sites and they make no representation or warranty that any information, material or functions included in Business Online or the Services are appropriate for use by you in your jurisdiction. If you choose to use Business Online and/or the Services, you do so on your own initiative and are solely responsible for compliance with applicable local laws and regulations. Neither the Bank nor its suppliers warrant the adequacy, accuracy or completeness of any information provided as a part of Business Online or the Services, or contained in any third party sites linked to or from the Bank's web site. The Company assumes the entire risk as to the quality and performance of the Services.

**THE BANK MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY, FUNCTIONALITY OR PERFORMANCE OF BUSINESS ONLINE, THE SERVICES, OR ANY SOFTWARE THAT MAY BE USED IN CONNECTION WITH SAME. THE BANK DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ERROR-FREE OPERATION.**

### **INDEMNIFICATION**

Company shall indemnify, defend and hold harmless the Bank and its officers, employees, directors, suppliers and agents, in their individual capacities or otherwise, from and against any losses arising out of the Company's use of Business online or the Services except for losses arising from the sole negligence of the Bank, the Bank's gross negligence, or the Bank's willful misconduct. In addition, Company shall hold harmless the Bank for processing any request for Services received from Company, including Wire Transfers, ACH Transfers, and Stop Payment Orders.

### **TERMINATION**

The Bank reserves the right to terminate Business Online or the Services, in whole or in part, at any time. The Company may terminate its enrollment in Business Online or any Service at any time upon notice from the Company and after the Bank has been given a reasonable time to terminate Business Online or the Services. The Bank shall be entitled to rely on any written notice believed by it in good faith to be signed by an authorized account signer.

Any termination of Business Online or any Service shall not affect any of the Bank's rights and Company's obligations with respect to transactions initiated by Company prior to such termination or the payment obligations of Company with respect to services performed by the Bank prior to termination, or prior to the Bank having a reasonable time to effectuate a termination of Business Online or the Services upon notice from the Company.

#### **APPLICABLE LAW**

You submit to the jurisdiction of, and these disclosures shall be governed by, the laws of the state of Washington, as well as the applicable federal laws of the United States. Venue for any action arising out of this Agreement shall be in a state court of competent jurisdiction covering Grays Harbor County, Washington.

#### **BANK SECRECY ACT REPORTING REQUIREMENTS**

As part of the Bank Secrecy Act recordkeeping requirements, the Bank is responsible to obtain, verify and record customer information for certain transactions and report this information to U.S. Government agencies. The information obtained includes, but is not limited to:

- Name and home address for an individual or Business name and business address
- Social Security or taxpayer identification number
- Date of birth for an individual
- Occupation
- Information for anyone on whose behalf you are conducting transactions

The Bank complies with recording and recordkeeping requirements under the Bank Secrecy Act including monitoring accounts on a periodic basis for compliance. The Bank reserves the right to close any account that attempts to avoid these requirements.

#### **PROHIBITED TRANSACTIONS**

The Unlawful Internet Gambling Enforcement Act of 2006 prohibits any person engaged in the business of betting or wagering from knowingly accepting any payment in connection with the participation of another person in unlawful Internet gambling (a "restricted transaction"). You acknowledge and agree that you are prohibited from processing a restricted transaction through your account or banking relationship with the Bank. Your participation or attempted participation, in any restricted transaction through your account or banking relationship with the Bank may result in the termination of your banking relationship with the Bank and/or the closure of your account.

#### **ATTORNEYS' FEES**

In any action or dispute arising from or relating to your account, Business Online, or the Services, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

#### **JURY TRIAL WAIVER**

In any action or dispute arising from or relating to your account, Business Online, or the Services, the Bank and the Company waive their respective right to request trial by jury.

#### **ASSIGNMENT**

The Bank may assign its rights and/or delegate all or a portion of its duties to the Company to a third party. The Company may not sublicense, assign, or transfer the license to use the Services, or any other rights or duties related thereto, except with written consent of the Bank.

#### **BINDING AGREEMENT; BENEFIT**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Bank or the Company hereunder.

#### **FORCE MAJEURE**

Neither party shall be liable for any loss nor damage due to causes beyond its control, including fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts or omissions of communications carriers, or other causes beyond that party's control. Either party may terminate this Agreement immediately on written notice if the other party is prevented from performing its obligations under this Agreement for a period of more than thirty (30) days due to the reasons set forth in this subsection.



**CONSTRUCTION**

This Agreement shall be construed equally against the parties regardless of who is more responsible for its preparation. If there is a conflict between a part of this Agreement and any present or future law, the part of this Agreement that is affected shall be curtailed only to the extent necessary to bring it within the requirements of that law.

**SEVERABILITY**

In the event that any provision of this Agreement shall be determined to be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.

**WAIVER**

The Bank may waive enforcement of any provision of this Agreement. Any waiver in connection with a Transaction shall not affect the Bank's rights with respect to any other Transaction or modify the terms of this Agreement.

**HEADINGS**

Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

**ENTIRETY OF AGREEMENT**

Except as otherwise provided herein, this Agreement constitutes the entire Agreement between the parties and supersedes all previous agreements, promises and representations, whether written or oral between the parties with respect to the subject matter hereof.