

Mobile Deposit Agreement

END USER TERMS

This service is provided to you by Bank of Marin (the “Bank”) and powered by a Third Party (“Licensor”) mobile technology solution. Section A of these End User Terms is a legal agreement between you and the Bank. Section B of these End User Terms is a legal agreement between you and the Licensor.

SECTION A

BANK OF MARIN TERMS AND CONDITIONS

Thank you for using the Bank’s Mobile Banking combined with your handheld’s text messaging capabilities. For help, text “HELP” to 79680. To cancel your plan, text “STOP” to 79680 at any time. In case of questions please contact customer service at clientservices@bankofmarin.com or 1.415.884.4590.

Terms and Conditions

1. The services are separate and apart from any other charges that may be assessed by your wireless carrier for text messages sent to or received from the You are responsible for any fees or other charges that your wireless carrier may charge for any related data or message services, including without limitation for short message service.
2. The services are provided by the Bank and not by any other third party. You and the Bank are solely responsible for the content transmitted through the text messages sent to and from the Bank. You must provide source indication in any messages you send (e.g., mobile telephone number, “From” field in text message, etc.)
3. The Bank’s Mobile Banking service and Remote Deposit Service (see §§ 11 through 18 of this Section A) are features of the Bank’s various consumer and business online banking services (“Online Banking”), and are subject to all of the provisions of the Bank’s Deposit Agreement and Disclosure Statement and the Online Banking agreement and disclosure statement applicable to your accounts.
4. Because of the additional risks that may be present when a mobile device, such as a smartphone or tablet (“Mobile Device”), is used to conduct financial transactions, in addition to keeping your user name and your password needed to access online Banking services secure, you agree to take advantage of the feature of your Mobile Device that allows you to set, and then requires you to use, a password, design or other protective function to open your Mobile Device, so as to prevent anyone who steals or otherwise gains unauthorized access to your Mobile Device from using it. In other words, in addition to the usual security features built into the Bank’s Online Banking system, you agree to use this additional security feature if it is available on your Mobile Device.
5. Not all Online Banking services or the functionality of the Online Banking website are available when you use Mobile Banking and the functionality available to you may vary based on the particular Mobile Device you use. The Bank will notify you which Online Banking services and functionality are available through Mobile Banking and which are available using your Mobile Device. For those Online Banking services available through your Mobile Device, the Online Banking services may use different terminology and appear in different formats when accessed through your Mobile Device, and you may be required to follow different Online Banking instructions for your Mobile Device than when using a personal comput Processing of payment and transfer instructions may take longer through Mobile Banking.
6. If you use Text Messaging, the Bank will send you a message only once per
7. Mobile Banking payments, transfers and other transactions may be delayed, misdirected, mishandled, interrupted, contain inaccurate content or otherwise be negatively impacted by factors relating to your Mobile

Device, your Internet service provider, wireless provider or third parties, or due to other reasons outside of the Bank's control. Your wireless provider and other service providers may also collect data from your Mobile Banking usage, and their practices are governed by their own policies. The Bank will not be responsible or liable for the acts or policies of such service providers. THE BANK WILL NOT BE LIABLE FOR LOSSES OR DAMAGES DUE TO ANY SUCH DELAYS, INTERRUPTIONS OR NEGATIVE IMPACTS TO MOBILE BANKING AND YOU AGREE THAT NEITHER THE BANK

NOR ITS SERVICE PROVIDERS WILL BE LIABLE FOR ANY ERRORS OR DELAYS IN THE CONTENT, OR FOR ANY ACTIONS TAKEN IN RELIANCE THEREON. MOBILE BANKING SERVICES INCLUDING TEXT MESSAGING AND REMOTE DEPOSIT SERVICES ARE PROVIDED ON AN AS IS, AS AVAILABLE BASIS. THE BANK AND ITS SERVICE PROVIDERS MAKE NO

REPRESENTATION OR WARRANTY RELATING TO THE MOBILE BANKING SERVICE, INCLUDING, WITHOUT LIMITATION, EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS AND TITLE, AND ANY IMPLIED WARRANTY ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NON-PERFORMANCE OF THE MOBILE BANKING SERVICE IS FOR THE BANK TO USE COMMERCIALY REASONABLE EFFORTS TO REPAIR THE MOBILE BANKING SERVICE IT PROVIDES.

8. You provide your express consent to the Bank and its agents and service providers to use your telephone or mobile phone number, email address or other delivery location the Bank has in its records to contact you in connection with Online Banking services, to otherwise operate, develop and improve Mobile Banking service, and for any other purpose including marketing. Such contact may include Text Messaging sent to your Mobile Device. You understand and agree that Mobile Banking messages may not be encrypted and may contain personal or confidential information about you such as your mobile phone number, your wireless provider's name, the date, time and content of any mobile banking messages, including account activity and status of your Accounts, and other information that you or the Bank may provide. The Bank will only use the information you provide to the Bank from your Mobile Banking usage in connection with the Bank's Online Banking service. Nonetheless, the Bank reserves the right at all times to disclose any information as necessary to satisfy any law, regulation or governmental request, to avoid liability, or to protect the Bank's rights or property. When you complete forms online or otherwise provide the Bank with information in connection with the Bank's Mobile Banking service, you agree to provide accurate, complete and true information.
9. The Bank's Mobile Banking service, as well as the content and materials you may receive or access through your use of Mobile Banking are proprietary to the Bank and its Licensors, and are for your use only. You will not damage, impair, interfere with or disrupt the Bank's Mobile Banking service or its functionality.
10. YOU AGREE TO INDEMNIFY, DEFEND AND HOLD THE BANK, ITS EMPLOYEES AND AGENTS HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITY, COST AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) ARISING FROM YOUR USE OF THE BANK'S MOBILE BANKING SERVICE, YOUR PROVISION OF A

TELEPHONE OR MOBILE PHONE NUMBER, EMAIL ADDRESS, OR OTHER DELIVERY LOCATION THAT IS NOT YOUR OWN, OR YOUR VIOLATION OF APPLICABLE FEDERAL, STATE OR LOCAL LAW, REGULATION OR ORDINANCE.

11. The Bank's Remote Deposit Service allows you to make deposits of the electronic image of a check or Substitute Check (each an "Item") to your eligible accounts by capturing an electronic image of the Item with a capture device (such as a camera) on your Mobile Device and submitting images and associated information to the Bank for processing. Your use of Remote Deposit Service is subject to all of the following provisions.
12. 12. You agree:

- a. to deposit only images that originated as paper checks;
- b. not to deposit third party or electronic checks;
- c. to properly endorse all Items, including “For Mobile Deposit Only at Bank of Marin” before depositing them;
- d. not to deposit Items into your account unless you have authority to do so;
- e. not to exceed any deposit limits the Bank establishes;
- f. not to redeposit or otherwise transfer or negotiate any original Item after you submit the Item for deposit through Remote Deposit Service;
- g. to be solely responsible for the storage or destruction of all original Items you submit deposit through Remote Deposit Service, as further provided below;
- h. that the electronic image of the Item received by the Bank through Remote Deposit Service will become the legal representation of the Item for all purposes;
- i. that any image of an Item the Bank receives accurately and legibly represents all of the information on the front and back sides of the original Item as originally drawn; and
- j. to promptly provide the Bank with written notice of any claim you receive regarding an Item you have deposited through Mobile Remote Deposit Service.

13. The image of an Item transmitted using the Remote Deposit Service must:

- a. be legible and clear;
- b. not be altered after its receipt by you, except for the placement thereon of your endorsement; and
- c. comply with industry requirements established and updated by the American National Standards Institute (“ANSI”), Federal Reserve Board and any other regulatory agency.

14. You authorize the Bank to convert Items to Image Replacement Documents (“IRDs”) or transmit them as an image. If the electronic files and/or images transmitted to the Bank with respect to any Item do not comply with the Bank’s, industry’s, ANSI’s, the Federal Reserve Bank’s or any other applicable regulatory agency requirements for content and/or format, the Bank may, in its sole discretion:

- a. further transmit the Item and data in the form received from you;
- b. repair or attempt to repair the Item or data and then further transmit it;
- c. process the Item as photocopies in lieu of originals; or
- d. return the data and Item to you unprocessed and charge back your account.

15. The Bank may return or refuse to accept all or any part of a deposit to your Account using Remote Deposit Service at any time and will not be liable for doing so even if such action causes outstanding checks or other debits to your account to be dishonored and

16. Images of Items transmitted by you are not considered received by the Bank until you receive an electronic confirmation of the receipt of the deposit from the Bank. Receipt of such confirmation will not constitute confirmation that the transmission was error free or complete. If the Bank receives the image of an Item for deposit on or before 3:00 p.m. Pacific Time on a business day, the Bank will consider that day the day of deposit. If the Bank receives the image of an Item for deposit after 3:00 p.m. Pacific Time or on a non-business day, the Bank will consider the next business day as the day of deposit. You understand and agree that funds from Items deposited under the Bank’s Remote Deposit Service are not subject to the Bank’s standard Funds Availability Policy applicable to your account; all deposits will be made available to you at times which may be later than those that would apply to an in person deposit of the same items, and, as with all of your deposits, will be subject to final collection by the Bank.

17. You are responsible for retaining each original Item in a safe and secure environment, and for ensuring that they are not deposited a second time. Forty five (45) days following your receipt of a confirmation from the Bank that an image of an Item has been received, you agree to mark the Item as “VOID” and properly dispose it, to further ensure it is not presented for deposit again.

Upon the Bank's request for any reason, you will promptly (but in any event within five (5) business days) provide the Bank with any retained original Item.

18. You agree to promptly review each account statement and notify the Bank of any errors. All deposits made through the Remote Deposit Service will be deemed to be correct unless you notify the Bank of any errors to deposits made through the Service promptly after the applicable account statement is mailed or otherwise provided to you or as otherwise specified in your Online Banking Agreement. Any delay in reporting such errors may affect your right to have the error corrected.

SECTION B

END USER LICENSE AGREEMENT TERMS FOR THE DOWNLOADABLE APP

To be Agreed to by End User Prior to Use of the Downloadable App

1. You acknowledge and agree that a third party provider or licensor to your financial services provider ("Licensor") is the owner of all right, title and interest in and to the downloaded software to be used for access to

Mobile Banking services from your financial services provider and the computer programs contained therein in machine readable object code form as well as any accompanying user documentation along with all subsequent copies, updates or versions thereof which are made available to you (if any), regardless of the media or form in which they may exist (collectively the "Software").

2. License Subject to the terms and conditions of this Agreement, you are hereby granted a limited, nonexclusive license to use the Software in accordance with the terms of this Agreement. All rights not expressly granted to you by this Agreement are hereby reserved by the owner of the Software. Nothing in this license will entitle you to receive hard-copy documentation, technical support, telephone assistance, or updates to the Software. This Agreement may be terminated at any time, for any reason or no reason. Upon termination, you agree to immediately destroy all copies of the Software in your possession or control.
3. You shall not: (i) modify, revise or create any derivative works of the Software; (ii) decompile, reverse engineer or otherwise attempt to derive the source code for the Software; (iii) redistribute, sell, rent, lease, sublicense, or otherwise transfer rights to the Software; or (iv) remove or alter any proprietary notices, legends, symbols or labels in the Software, including, but not limited to, any trademark, logo or copyright.
4. Disclaimer Warranty. THE SOFTWARE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO WARRANTY IS PROVIDED THAT THE SOFTWARE WILL BE FREE FROM DEFECTS OR VIRUSES OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED. YOUR USE OF THE SOFTWARE AND ANY OTHER MATERIAL OR

SERVICES DOWNLOADED OR MADE AVAILABLE TO YOU THROUGH THE SOFTWARE IS AT YOUR OWN DISCRETION

AND RISK, AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE RESULTING FROM THEIR USE.

5. Limitations of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL LICENSOR, THE PROVIDER OF ANY FINANCIAL SERVICES AVAILABLE

THROUGH OR RELATED TO THE SOFTWARE, ANY OF THEIR CONTRACTORS OR PROVIDERS OR ANY OF EACH OF THEIR AFFILIATES BE LIABLE FOR ANY DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, INCLUDING BUT NOT LIMITED TO ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH ANY CLAIM IS BASED. IN ANY CASE, LIABILITY OF LICENSOR OR ANY OF THE OTHER PERSONS OR ENTITIES DESCRIBED IN THE PRECEDING SENTENCE ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE SHALL NOT EXCEED IN THE AGGREGATE THE LESSER OF \$10.00 OR THE SUM OF THE FEES PAID BY YOU FOR THIS LICENSE.

6. U.S. Government Restricted Rights. The Software is commercial computer software subject to RESTRICTED RIGHTS. In accordance With 48 CFR 12.212 (Computer software) or DFARS 227.7202 (Commercial computer software and commercial computer software documentation), as applicable, the use, duplication, and disclosure of the Software by the United States of America, its agencies or instrumentalities is subject to the restrictions set forth in this Agreement.
7. Miscellaneous. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof. This Agreement will be governed by and construed in accordance with the laws of the state of California excluding that body of laws pertaining to conflict of laws. If any provision of this Agreement is determined by a court of law to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of California and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related to be illegal or unenforceable, such provision will be enforced to the maximum extent possible and the other provisions will remain effective and enforceable. All disputes relating to this Agreement are subject to the exclusive jurisdiction of the courts of California and the parties expressly consent to jurisdiction and venue thereof and therein. The parties confirm that this Agreement and all related documentation is and will be in the English language. The application of the United Nations Convention on Contracts for the International Sale of Goods is hereby expressly waived and excluded.
8. Content and Services. Neither Licensor nor the provider of the wireless network is the provider of any financial services available through or related to the Software, and neither Licensor nor the provider of the wireless network or any contractor of the provider of the financial services available through or related to the Software, is responsible for any of the materials, information, products or services made available to you via the Software.