

## **myHeritage Bank Mobile Deposit Terms of Service**

This Mobile Deposit Terms of Service Agreement (this "Agreement") is entered into by and between Heritage Bank NA ("HBNA" or "us," "our" or "we," depending on the context) and you, a current HBNA customer. This Agreement governs the terms of our consumer remote deposit service, which we refer to as "HBNA Mobile Deposit". HBNA Mobile Deposit is designed to increase convenience to our HBNA customers. The service allows you to make deposits of checks ("original checks") to your HBNA account(s) from home or other remote locations by delivering the digital image of an original check and associated deposit information ("images") to us, or our processor, with your smart phone, tablet or other mobile device. You must be an HBNA online banking user with a valid email address to apply for HBNA Mobile Deposit. When you sign up for Heritage Bank's Mobile Banking service through online banking, you will also have access to HBNA Mobile Deposit. Your use of these services constitutes your acceptance of this Agreement.

**Definitions.** As there are some terms and/or documents referred to in this Agreement with which you may be unfamiliar, we use the following definitions throughout this Agreement:

*Deposit Account Terms and Conditions:* Your HBNA Deposit Account Terms and Conditions were given to you at the time your account was opened. It is also available upon request from a customer service representative at any of our branches and also online at: [www.heritagebankna.com/mobilebanking](http://www.heritagebankna.com/mobilebanking).

*Drawn On:* When this or a similar phrase is used with reference to an account, it means the account in which the funds for the check that is to be paid are held.

*Endorsement:* The payee's signature(s) and other required information on the back of the check.

*Payee:* The person to whom payment is made by a check.

*Payor:* The person who orders payment – in other words, the person who SIGNS a check.

**Limits.** Mobile Remote Deposits are limited in amount to \$5,000 per item and \$5,000 per day. These amounts are subject to change without notice. Businesses may apply for a higher limit. If you attempt to initiate a deposit in excess of these limits, your deposit will be rejected. If we make an exception and permit you to make a deposit in excess of your limits, such deposit will still be subject to the terms of this agreement, and we will not be obligated to allow such a deposit at other times.

**Eligible items.** You agree to scan and deposit only checks drawn on U.S. banks in U.S. dollars.

You agree that you will not use HBNA Mobile Deposit to deposit:

- Checks payable to any individual or entity other than the name on the depository account;
- Checks which are stale (more than 6 months old,) or post-dated (made payable at some point in the future);
- Checks that contain evidence of alteration, or that you know or suspect, or should know or suspect, are fraudulent or otherwise not authorized by the owner of the account on which the check is drawn;
- Checks that have been previously negotiated;
- Checks that have previously been submitted through the Service or through a remote deposit capture service offered at any other financial institution;
- Deposits which exceed your per check or daily limit.

**Requirements.** Each image must provide all of the information that is contained on the front and back of the original check at the time presented to you by the payor, including, but not limited to, the following information: information about the payor and the paying bank that is preprinted on the original check; the numerical encoded information on the bottom of the check; the payor's signature(s); and all required endorsements applied to the back of the original check. The image quality must meet the standards established by the American National Standards Institute, the Board of Governors of the Federal Reserve, and any other regulatory agency, clearing house or association.

Checks presented through the Service must be deposited to an account in the name of the payee. If the check is made payable to you and another payee, both of you must endorse the check, and it must be deposited into an HBNA joint account owned by both of you. If the check is payable to you or another payee, or if the check lists two payees and does not specify "or", either of you may endorse the check and deposit it into any HBNA account for which the person endorsing the check is an authorized party. As described in your Account Agreement, we may not accept checks with multiple endorsements for deposit unless we are able to verify each endorsement.

Endorsements must be made on the back of the check within 1½ inches from the top edge. Your endorsement must include your signature, the Business name, if depositing a check payable to a business, the account number and the words "FOR MOBILE DEPOSIT ONLY AT HERITAGE BANK". Any loss we incur from a delay or processing error resulting from an irregular endorsement or other markings by you will be your responsibility.

**Receipt of Deposit.** All images processed for deposit through HBNA Mobile Deposit will be treated as "deposits" under your current Account Agreement with us and will be subject to all terms of the Account Agreement. When we receive an image, we will only notify you only if a deposit is rejected. The image is not deemed "received" by us until it is posted to your account at the end of the business day. Acceptance within the HBNA Mobile Deposit application does not mean that the image is free of errors or will be accepted for deposit. We are not responsible for any image we do not receive.

Following receipt, we may process the image by preparing a "substitute check" or using the image to clear the item.

We reserve the right to reject any deposit made through HBNA Mobile Deposit, which fails to satisfy any of our processing requirements, as determined by us in our sole discretion. We will notify you of rejected images. Reasons for rejection may include any of the following: incomplete or missing endorsement; illegible check or poor image quality; altered check; or duplicate check. This list is a list of examples only and is not a list of all of the reasons that an image of a check may be rejected.

**Original checks.** After you receive confirmation that we have received an image, you must securely store the original check for thirty (30) days after transmission to us and make the original check accessible to us at our request. We may request to view the original check for a variety of reasons, such as we have concerns with the accuracy or validity of the image. Upon our request, and within five (5) business days, you must deliver to us, at your expense, the original check. If you do not provide the original check in a timely manner, the deposit in question will be reversed from your account. At the end of this thirty (30) day period, you must destroy the original check by first marking it "VOID" and then destroying it by cross-cut shredding or another commercially acceptable means of destruction. After destruction of an original check, the image will be the sole evidence of the original check.

You agree that you will never re-present the original check. You understand that you are responsible if the original check is ever presented again for payment.

**Returned Deposits.** As with any non-cash deposit, credit to your account for any check deposited using HBNA Mobile Deposit is provisional. If an original check deposited through HBNA Mobile Deposit is dishonored, rejected or otherwise returned unpaid for any reason, including without limitation issues relating to the quality of the image that you have transmitted to us, you will receive an image, reproduction or substitute of the original check and we will charge the deposit amount back to your account. As with any returned item, you will be responsible for reimbursing us for all loss, cost, damage or expense caused by or relating to the processing of the returned item. You are prohibited from attempting to deposit or otherwise negotiate an original check through HBNA Mobile Deposit if it has been charged back to you. You may be able to negotiate a returned item in person and should speak to a customer service representative at any of our branches if you require such assistance. As described in your Account Agreement, if you deposit a check that is returned to HBNA for any reason, including insufficient funds of the payor, we may "set off" the amount of the returned item. We may "set off" by debiting the account into which you deposited the returned item or by transferring funds from another HBNA account held by you. We may do so whether or not the reason for the returned item was presented to us on a timely basis.

**Your Warranties.** You make the following warranties and representations with respect to each image you transmit to us using HBNA Mobile Deposit:

- Each image is a true and accurate rendition of the front and back of the original check, without any alteration, and the payer of the check has no defense against payment of the check.

- The amount, payee(s), signature(s), and endorsement(s) on the image and on the original check are legible, genuine, and accurate.
- You will not deposit or otherwise endorse to a third party the original check. No person will receive a transfer, presentment, return of, or otherwise be charged for, the original check or a paper or electronic representation of the original check, such that the person will be asked to make payment based on an item that has already been paid.
- There are no other duplicate images of the original check, other than a non-negotiable photocopy which may be kept for recordkeeping purposes.
- The original check was authorized by the payer in the amount stated on the original check and to the payee(s) stated on the original check.
- You are authorized to enforce and obtain payment of the original check.
- You have possession of the original check and no party will submit the original check for payment.
- You will notify us immediately if you learn of any loss or theft of the original check.

With respect to each image, you make to us all representations and warranties that we also make, or are deemed to make, to any party pursuant to law, regulation or clearinghouse rule. You agree that files and images transmitted to us will contain no viruses or any other disabling features that may have an adverse impact on our network, data, or related systems.

**Compliance with Law.** You will use HBNA Mobile Deposit for lawful purposes and in compliance with all applicable laws, rules and regulations. You warrant that you will only transmit images of original checks for deposit and that you have handled the original checks in accordance with applicable laws, rules and regulations.

**HBNA Mobile Deposit Unavailability.** HBNA Mobile Deposit may be temporarily unavailable due to system maintenance or technical difficulties, including those of the Internet service provider, cellular service provider and/or Internet software. In the event that HBNA Mobile Deposit is unavailable, you may deposit original checks at our branches or by mailing the original check to: Heritage Bank NA, P.O. Box 1124, Willmar, MN 56201.

**Funds Availability.** Deposits made through HBNA Mobile Deposit are subject to our Funds Availability Policy. Our general policy is to make funds from a check deposit available for withdrawal on the day we receive your deposit. In some cases, we may delay the availability of your deposit. Then, the funds will generally be available by the seventh business day after the deposit. Although HBNA Mobile Deposit utilizes technology as a delivery method, checks deposited through this service are processed in the same manner as a paper deposit you would make at a branch or ATM and are NOT considered "electronic direct deposits" for purposes of funds availability. To assist you in understanding the availability of your deposit, please note that deposits made through HBNA Mobile Deposit will be considered to be made in Willmar, Minnesota with a 6:00 P.M. Central cut-off time. Any deposit made through HBNA Mobile Deposit received before 6:00 P.M. Central on a business day will be credited to your account the same day. Deposits made through HBNA Mobile Deposit which are received after 6:00 P.M. and any such deposits received on holidays or days that are not our business days, will be credited to your account on the following business day.

**Business Days.** For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays and federal holidays.

**HBNA Mobile Deposit Security.** You agree you will complete each deposit via HBNA Mobile Deposit promptly. If you are unable to complete your deposit promptly, you will ensure that your mobile device remains securely in your possession until the deposit has been completed. It is your responsibility to take all necessary steps to safeguard against unauthorized deposits. You must notify us immediately by telephone at (800) 344-7048 and with written confirmation if you learn of any loss or theft of original checks. You agree to ensure the safety and integrity of original checks from the time of receipt until the time of destruction. If warranted in our reasonable judgment, we may audit and monitor you, and you agree to cooperate with us to permit such monitoring to confirm that you have satisfied your obligations under this Agreement.

**Errors in Transmission.** By using these services, you accept the risk that an item may be intercepted or misdirected during transmission. HBNA bears no liability to you or others for any such intercepted or misdirected items or information disclosed through such errors.

**Your Responsibility.** You are solely responsible for the quality, completeness, accuracy, validity and integrity of any image transmitted to us using HBNA Mobile Deposit. You are solely responsible if you intentionally or unintentionally

submit fraudulent, inaccurate, incorrect, illegible or otherwise improper or unusable images to us. You are also solely responsible if HBNA Mobile Deposit is used by any person other than you, whether or not you have authorized such other person, to submit fraudulent, unauthorized, inaccurate, incorrect, illegible or otherwise improper or unusable images to us.

In addition, you agree that you will not modify, change, alter, translate, create derivative works from, reverse engineer, disassemble or decompile, copy or reproduce all or any part of, or interfere or attempt to interfere with, the technology or service included in or associated with HBNA Mobile Deposit. We and our technology partners retain all rights, title and interests in and to all services, technology, software and hardware included in or associated with HBNA Mobile Deposit.

**Accountholder's Indemnification Obligation.** You understand and agree that you are required to indemnify us and all of our affiliates, officers, employees and agents and hold us and all of our affiliates, officers, employees and agents harmless from and against any and all claims, actions, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expenses, arising from your use of HBNA Mobile Deposit and/or any breach of the terms and conditions of this Agreement. You understand and agree that this paragraph shall survive the termination of this Agreement.

You understand and agree that you are required to indemnify our technology partners and hold harmless their affiliates, officers, employees and agents against any third party claims, suits, proceedings, actions or demands, including claims of another financial institution, business entity or governmental authority, and all losses, liabilities, damages, fines, penalties, costs and expenses, including court costs and reasonable attorney fees and expenses, arising from such claims, to the extent such claim is related to us or your use of HBNA Mobile Deposit or our technology partners' applications relating thereto, unless such claim directly results from an action or omission made by our technology partners in bad faith. You understand and agree that this paragraph shall survive the termination of this Agreement.

**DISCLAIMER OF WARRANTIES.** YOU AGREE THAT YOUR USE OF HBNA MOBILE DEPOSIT 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. WE DISCLAIM ALL WARRANTIES OF ANY KIND AS TO THE USE OF HBNA MOBILE DEPOSIT, 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 HBNA MOBILE DEPOSIT WILL MEET YOUR REQUIREMENTS OR WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE. WE MAKE NO WARRANTY THAT THE RESULTS THAT MAY BE OBTAINED USING HBNA MOBILE DEPOSIT WILL BE ACCURATE OR RELIABLE OR THAT ANY ERRORS IN HBNA MOBILE DEPOSIT OR ANY OF THE TECHNOLOGY RELATED THERETO WILL BE CORRECTED.

**LIMITATION OF LIABILITY.** 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 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, HBNA MOBILE DEPOSIT REGARDLESS OF THE FORM OF ACTION OR CLAIM (WHETHER CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF WE HAVE BEEN INFORMED OF THE POSSIBILITY THEREOF, EXCEPT AS OTHERWISE REQUIRED BY LAW.

**Amendments and Termination:** We may restrict and/or cancel, without prior notice, your ability to use the HBNA Mobile Deposit system if we notice any suspicious activity. Under such circumstances, your service will not be reinstated until such problems are resolved. You may terminate this service anytime by sending a written request by electronic mail to: [HBOOnlineService@HeritageBankNA.com](mailto:HBOOnlineService@HeritageBankNA.com), or by first class mail to: Heritage Bank NA, Deposit Services Department, P.O. Box 1124, Willmar, MN 56201. Termination by either party will not affect your obligations under this Agreement, even if we allow a transaction to be completed after the termination of this Agreement. HBNA reserves the right, in its sole discretion, to change, modify, add, or remove portions from the Services. We will notify you of any material change via e-mail, text message, or on our website(s) by providing a link to the revised Agreement or by an online secure message. You will be prompted to Accept or reject any material change to this agreement the next time you use the Service after HBNA has made the change. Further, you will be deemed to accept any changes to this Agreement if you continue to maintain and use HBNA Mobile Deposit, which continuing maintenance and use must occur after you have received any required notice, if applicable.

**Severability.** To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this

Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.

**Entire Agreement.** This Agreement, including all agreements and other documents incorporated by reference, embodies the entire agreement between the parties. Any oral agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect.

**No Waiver.** No waiver of the performance or breach of, or default under, any condition or obligation in this Agreement will be deemed to be a waiver of any other performance, or breach or any other condition or obligation of this Agreement.

**Governing Law.** This Agreement is governed by, and shall be construed in accordance with the laws of the state of Minnesota without regard to the conflict of laws principles thereof.

**Disputes.** Any dispute relating in any way to your use of HBNA Mobile Deposit, to this Agreement, to your Account Agreement, to the Funds Availability Disclosure, or to our advertising or solicitation practices shall be submitted to confidential arbitration in the state of Minnesota. Arbitration shall be conducted under the rules then prevailing of the American Arbitration Association. The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction. To the fullest extent permitted by applicable law, no such arbitration shall be joined to an arbitration or any other action or proceeding involving any other party subject to an agreement with us governing such party's use of HBNA Mobile Deposit, whether through class action or arbitration proceedings or otherwise.

**Notices.** Any communication, notice, statement or demand required to be served on any of the parties under this Agreement shall be in writing and sent either by electronic mail, first class mail or registered mail to the respective addresses of the parties as indicated in this Agreement or, in the case of any such communication, notice, statement or demand from us to you, to the most recent address for you that we maintain in our records as of such time.