



AUTOMATED CLEARING HOUSE AGREEMENT

The terms of this Automated Clearing House Agreement is by and between The Bank of Elk River and the "Company", as identified on page seven of this agreement.

The Company has requested that The Bank of Elk River permit it to initiate debit and credit entries to accounts maintained at The Bank of Elk River and other financial institutions by means of the Automated Clearing House "ACH" Network. The Bank of Elk River has agreed to do so on the terms of this Agreement.

The Company and The Bank of Elk River agree as follows:

1. **Definitions.** Unless defined in this Agreement, capitalized terms shall have the meanings provided in the Rules.

A. **Rules.** "Rules" means the rules of the National Automated Clearing House Association (NACHA) and Appendices to the Rules of the National Automated Clearing House, as amended from time to time.

B. **Effective Entry Date.** "Effective Entry Date" means the date the Entries are posted, which is a business day, Monday through Friday and excluding these Federal holidays: New Years Day, Martin Luther King Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day and Christmas Day.

C. **Entry.** "Entry" has the meaning given in the Rules, except that it shall also include an "On-Us Entry."

D. **On-Us Entry.** "On-Us Entry" means a debit or credit Entry to an account maintained at The Bank of Elk River.

2. **Applicable Agreements.** This Agreement governs the Company's use of ACH Origination. The Company's access to and use of the Bank's online services shall be governed by the applicable electronic access agreement(s), as amended from time to time, between the Company and the Bank. In the event of conflict between this Agreement and any other Agreement with the Bank, this Agreement shall prevail, unless otherwise provided herein.

3. **Compliance with the Rules and Applicable Law.** The Company's rights and obligations with respect to any Entry are governed by the Rules, this Agreement and applicable law. The Company acknowledges receipt of a copy of the Rules as of the date of this Agreement. The Company agrees to comply with and be bound by the Rules. Information and updates to the Rules can be found by logging onto www.NACHA.org. The Company agrees to comply with applicable state and federal law or regulation and Company warrants that it will not transmit any Entry that violates the laws of the United States of America. This includes among other things, that Company is not violating the Office of Foreign Assets Control (OFAC) enforced sanctions and is not acting on behalf of or transmitting files to or from any persons subject to such sanctions. Furthermore due to the increasing compliance risk, The Company will not have the authority to perform International ACH Transactions (IAT's). All originating transactions must be

conducted within the territorial jurisdiction of the United States. The Bank of Elk River reserves the right to audit the Originators compliance with the agreement and all ACH rules.

4. Transmittal of Entries and Security Procedures.

- A. The Company shall transmit any debit or credit Entry to The Bank of Elk River in accordance with the Rules. The Company shall comply with the security and delivery procedures described in Attachment 1 to this Agreement. Company acknowledges that the security procedures are for verification of authenticity and not to detect errors in the Entry. Company warrants that no individual will be allowed to initiate transfers without proper supervision and safeguards and agrees to take all reasonable steps to maintain confidentiality of the security procedures and any related security features. If Company knows or believes that an unauthorized individual has transmitted or attempted to transmit one or more Entries or that the security procedures have otherwise been compromised, Company agrees to immediately notify The Bank of Elk River and agrees that any Entry received by The Bank of Elk River before or within a reasonable time after such notice to The Bank of Elk River shall be treated as authorized by Company.
- B. The Company shall notify The Bank of Elk River, in a timely manner, of any Consumer-Level ACH data breach. Consumer-Level ACH Data consists of (1) a bank account # together with a Bank RTN; or (2) customer's name together with customer's SS#. The Company shall provide The Bank of Elk River the approximate cause(s) of the breach incident, the approximate date of the breach incident, the approximate size of the affected population (victims), the type of data exposed, the routing and transit numbers of the affected RDFI accounts, and any organizations that are involved in the breach.
- C. The Company hereby authorizes The Bank of Elk River to transmit any Entry received by The Bank of Elk River from the Company in accordance with the Rules and the terms of this Agreement and to credit or debit the amount of such Entry to the accounts specified by Company.
- D. The Effective Entry Date (contained on the batch level, not the transaction level) is the date specified by the Company on which it intends the transaction(s) to be posted and settled. The Effective Entry Date must not be a Saturday, Sunday, or holiday observed by the Federal Reserve Bank as listed in the definitions above. Transactions submitted with an Effective Entry Date that is equal to the current day or earlier may be processed as same-day ACH and as such are eligible for additional fees.
- E. The Company is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Company's possession or under Company's control. The Bank is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at the Company's own discretion and risk, and the Bank is not responsible for any damage to Company's computer or operating systems or for loss of data that results from the download of any such material, whether due to any computer virus or otherwise. The Company is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to the Company's operating systems, and for protecting, securing, and backing up any data and information stored in or on the Company's operating systems. The Bank is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on the Company's operating systems or accessed through an Internet connection.

- F. The Company acknowledges and agrees that it is the Company's responsibility to protect itself and to be vigilant against email fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as "phishing" and "pharming"). The Company agrees to educate User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. The Company acknowledges that the Bank will never contact the Company by email in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event the Company receives an email or other electronic communication that the Company believes, or has reason to believe, is fraudulent, the Company agrees that neither Company nor its User(s), agents, and employees shall respond to the email, provide any information to the email sender, click on any links in the email, or otherwise comply with any instructions in the email. The Company agrees that the Bank is not responsible for any losses, injuries, or harm incurred by the Company as a result of any electronic, email, or Internet fraud.
- G. In the event of a breach of the Security Procedure, the Company agrees to assist the Bank in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing the Bank or the Bank's agent access to Company's hard drive, storage media and devices, systems and any other equipment or device that was used in breach of the Security Procedure. The Company further agrees to provide to the Bank any analysis of such equipment, device, or software or any report of such analysis performed by the Company, the Company's agents, law enforcement agencies, or any other third party. Failure of the Company to assist the Bank shall be an admission by the Company that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of the Company or who obtained information facilitating the breach of the Security Procedure from the Company and not from a source controlled by the Bank.

4. Company's Representations, Warranties and Agreements. Company represents and warrants that each Entry provided to The Bank of Elk River complies in all respects with the Rules. Company acknowledges and agrees that, pursuant to the Rules, The Bank of Elk River makes certain warranties to the ACH Network and other financial institutions and that such warranties are made in reliance on: (i) the representations and warranties of the Company, including but not limited to those contained in this section 4 of this Agreement, and, (ii) Company's agreement to be bound by the Rules and applicable law. The Company shall indemnify The Bank of Elk River against any loss, liability or expense (including attorneys' fees and expenses) resulting from, related to, or arising out of any breach of the Company's warranties or this Agreement. Without limiting the foregoing, Company warrants:

- A. Each Entry is authorized pursuant to the Rules and the authorization has not been revoked;
- B. Each credit Entry is timely and accurate;
- C. Each debit Entry is for a sum which, on the Effective Entry Date, will be due and owing to the Company from the party whose account will be debited, is for a sum specified by such party, or is to correct a previously transmitted erroneous credit Entry;
- D. No Entry has been reinitiated in violation of the Rules.

5. Financial Institution Obligations. Subject to Section 8 of this Agreement, The Bank of Elk River shall, in accordance with the Rules, process, transmit, and settle for any Entry. The Bank of Elk River shall have no obligation to transmit an Entry if the Company fails to comply with any terms of this Agreement.

6. Company's Account(s). The Company will maintain a deposit account (the "Account") with The Bank of Elk River at all times during the term of this Agreement. The Company shall at all

times maintain a balance of available funds in the Account sufficient to cover Company's obligations under this Agreement. The Company authorizes The Bank of Elk River to debit its Account for any amount it owes The Bank of Elk River as a result of this Agreement.

7. Prefunding. The Bank reserves the right to require the Company to pre-fund an account maintained at the Bank prior to, or in the case of a Same Day ACH Entry, on the Settlement Date of the ACH file. The Bank shall determine whether pre-funding is required based on criteria established from time to time by the Bank. The Bank will communicate directly to the Company if pre-funding is required and, if requested by the Company, will provide the Company with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, the Company will provide immediately available and collected funds sufficient to pay all Entries initiated by the Company (a) not later than 8:00 AM local time one (1) banking day before each Settlement Date, and (b) prior to initiating any Entries for which pre-funding is required.

8. Credit Approval and Exposure Limits. In transmitting ACH in accordance of this Service Agreement, the Bank must make certain warranties on behalf of Company. Specifically, the Bank is charged with assuring the financial soundness of Company to make the intended Entries. The Bank must approve all ACH Agreements and may request financial information from Company and/or a separate credit agreement. The Bank shall also be authorized to obtain a credit report(s) on Company as may be necessary from time to time. The Bank will also assign Company a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Company each day ("Daily Exposure Limit") and each month "Monthly Exposure Limit". Company acknowledges that the ACH Processing Limit is solely for the protection of the Bank and its assets. Company understands that daily requests for Entries exceeding this amount are honored solely at the discretion of the Bank. Requests not honored would be communicated to the Company or the Company's designated representative. The Company shall comply with the Exposure Limits as set. Such limits may be modified from time to time by the Bank at its sole discretion with notice to the Company.

9. Prohibited Transactions. Company agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Company is bound, (c) to engage in any internet or online gambling transaction, whether or not gambling is legal in any applicable jurisdiction, or (d) to engage in any transaction or activity that is not specifically authorized and permitted by this Agreement. Company acknowledges and agrees that the Bank has no obligation to monitor Company's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, the Bank reserves the right to decline to execute any transaction or activity that the Bank believes violates the terms of this Agreement.

8. Cancellations or Amendment of an Entry. The Company shall have no right to cancel or amend any Entry after its receipt by The Bank of Elk River. However, The Bank of Elk River shall use reasonable efforts to act on a request by the Company to cancel an Entry before transmitting it to the ACH Network or crediting or debiting an On-Us Entry. Any such request shall comply with the security procedures described on Attachment 1 of this Agreement. The Bank of Elk River shall have no liability if it fails to effect the cancellation.

9. Rejection of Entries. The Bank of Elk River may reject any Entry, including an On-Us Entry, which does not comply with the requirements in Attachment 1 of this Agreement and may reject any Entry if the Company is not otherwise in compliance with the terms of this Agreement or the Rules. The Bank of Elk River shall notify the Company in accordance with Attachment 1 of such rejection no later than the business day such Entry would otherwise have been transmitted by The Bank of Elk River to the ACH Network or, in the case of an On-Us Entry, the day before its Effective Entry Date.

9. **Provisional Credit Notice.** In the case of a credit Entry, credit given by the Receiver's financial institution for the Entry is provisional until the Receiver's financial institution has received final settlement through Federal Reserve Bank or has otherwise received payment. If the Receiver's financial institution does not receive such payment for the Entry, the Receiver's financial institution is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and Company will not be considered to have paid the amount of the credit Entry to the Receiver.

10. **Reversals.** If the Company has mistakenly initiated a duplicate Entry or File or a File contains an Entry or Entries with the types of erroneous data specified in the Rules relating to reversing files, the Company may reverse the File or Entry pursuant to the Rules. If the Company reverses an Entry or File, Company shall indemnify The Bank of Elk River against any claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.

11. **Notice of Returned Entries and Notification of Change.** The Bank of Elk River shall notify the Company in accordance with Attachment 1 of the receipt of a returned Entry from the ACH Network no later than one business day after the business day of such receipt. The Bank of Elk River shall have no obligation to re-transmit a returned Entry if The Bank of Elk River complied with the terms of this Agreement with respect to the Entry.

12. **Unauthorized Rate in Excess of 0.5%.** In the event the rate of unauthorized transactions exceeds 0.5% based on the calculations noted in the Rules, the Company will share the data requested by the Bank based on the Rules and will immediately begin the process of bringing the rate below .5%.

13. **Prenotification.** The Company may initiate a zero dollar prenote to allow the RDFI to verify the accuracy of the account information prior to sending a live entry.

14. **Periodic Statement.** The periodic statement issued by The Bank of Elk River for the Company's account will reflect Entries credited and debited to the Company's account. The Company agrees to notify The Bank of Elk River within a reasonable time not to exceed thirty (30) days after the Company receives a periodic statement of any discrepancy between the Company's records and the information in the periodic statement.

15. **Financial Statements.** Company will provide The Bank of Elk River financial information on an annual basis (or more frequently if so requested). Financial information includes a balance sheet and income statement from its most recent fiscal year-end. Company authorizes The Bank of Elk River, if applicable, to investigate and verify any information about the Company and to obtain information from any source regarding the financial condition, creditworthiness or character of the Company and/or any officer, shareholder, or principal of the Company.

16. **Fees.** Company agrees to pay The Bank of Elk River for ACH Origination services provided under this Agreement. The Bank of Elk River may change its fees from time to time upon notice to the Company.

ACH Monthly Fee	10.00
ACH Orig Setup Fee (<i>one-time</i>)	100.00
ACH Orig per Batch Fee	1.50
ACH Orig per Item Fee	0.10
ACH Returned Item	4.00
ACH Notification of Change	1.00
<i>Same Day ACH Fee's</i>	
SDA per Batch Fee	5.00
SDA per Item Fee	1.00

17. **Liability.** In the performance of the services required by this Agreement, The Bank of Elk River shall be entitled to rely solely on the information, representations and warranties provided by Company pursuant to this Agreement, and shall not be responsible for the accuracy or completeness of such information. The Bank of Elk River shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only in the event of loss due to its gross negligence or willful misconduct in performing those services. In no event shall The Bank of Elk River have any liability for any consequential, special, punitive, or indirect loss or damage, which the Company may incur or suffer in connection with this Agreement. In addition, The Bank of Elk River shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communications facilities, equipment failure, war, act of terror, emergency conditions, or other conditions beyond The Bank of Elk River's control.

18. **Credit and Debit Entries; Record Retention.** The Company shall obtain an authorization ("Authorization Agreement") as required by the Rules from the person or entity whose account will be debited or credited as the result of a debit or credit Entry initiated by the Company and the Company shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for two (2) years after termination or revocation of such authorization as stated in the Rules. Upon request, the Company shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules.

19. **Inconsistency of Name and Account Number.** The Company acknowledges that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person different from the named Receiver.

20. **Miscellaneous.** The Bank of Elk River may amend the terms of this Agreement from time to time by written notice to the Company. Either party may terminate this Agreement upon ten (10) days' written notice to the other or on the occurrence of a breach of the ACH rules. The Bank of Elk River shall have no obligation to transmit entries if the Company is in default of any of its obligation under this Agreement, including the obligation to pay The Bank of Elk River for each credit entry. The Bank of Elk River shall be entitled to rely on any written notice believed by it in good faith to be signed by all of the principals of the Company as specified on the ACH Originator Application. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

21. **Cooperation in Loss Recovery Efforts.** In the event of any damages for which Bank or Company may be liable to each other or to a third party pursuant to the services provided under this Agreement, the Bank and Company will undertake reasonable efforts to cooperate with each other, as permitted by applicable law, in performing loss recovery efforts and in connection with any actions that the relevant party may be obligated to defend or elects to pursue against a third party.

AUTOMATED CLEARING HOUSE AGREEMENT

This Agreement dated the ____ day of _____, 20____ is by and between _____ (Company) and The Bank of Elk River. The undersigned as reviewed and agrees to all terms of this agreement.

Company Name

Name & Title of Officer

Signature & Date

Name & Title of Officer

Signature & Date

Name & Title of Officer

Signature & Date

Description of entries (i.e. payroll, payments)

The Bank of Elk River

Name & Title of TBER Officer

Signature & Date

Attachment 1

A. Security Procedures and Delivery of Files:

- Delivery location: Use of the ACH Origination service requires a Cash Management account set up on The Bank of Elk River's web site (TheBankofElkRiver.com), which requires 128-bit encryption and multiple user IDs and passwords.
- Transmittal Register: Before an ACH file is transmitted, the Company will fax an ACH transmittal register, signed by one of the authorized signers of the business account, to The Bank of Elk River at 763-441-0478.
- Timing of Delivery: Files may be transmitted to The Bank of Elk River between the hours of 6:00 AM and 4:00 PM. All credit ACH files must be transmitted by 8:00 AM one business day before the Effective Entry Date in order to ensure funds availability on the opening of business on that date. All debit ACH files must be transmitted by 12:00 PM (noon) one business day before the Effective Entry Date. The Company may transmit ACH files up to 5 days before Effective Entry. The Bank of Elk River will hold advance files and process them to settle on the Effective Entry Date.
- Same Day ACH: File and transmittal must be received before 11:00 AM on Effective Entry Date.
- Acknowledgement of delivery: The Bank of Elk River will acknowledge receipt of the file transmission by return fax. If the totals of the ACH file received do not agree with those on the forward transmittal, The Bank of Elk River will contact one of the authorized signers on the business account. It is the Company's responsibility to correct the file and/or totals register in order for The Bank of Elk River to proceed. The Bank will not process an ACH file if it does not receive a signed ACH transmittal register.
- Input Schedule: At least annually, the Company will provide a calendar of upcoming Effective Entry Dates to the Bank.

B. Limits:

- The total dollar amount of Entries transmitted by Company to The Bank of Elk River on any single day shall not exceed the approved file limit on the ACH Originator Application. The Bank of Elk River may review the limit and approve a change upon written request by the Company.

C. Notice by The Bank of Elk River:

- If an Entry is rejected or returned The Bank of Elk River shall notify the Company by mail.

D. Format and Content of Entries:

- Files and entries will conform to the NACHA Rules. Allowable Standard Entry Class Codes are: CCD, CTX, PPD, RCK, TEL. No other SEC will be accepted.
- Description of entries (i.e. payroll, payments).

Attachment 2

Guaranty

In this Guaranty, "I," "me" and "my" refers to each individual who signs the Guaranty. "Customer" refers to the business entity described in the Agreement on the reverse side of this form.

I guaranty to The Bank of Elk River, (the "Bank") the full and prompt payment, when due, of the deposit account balance including any charges (the "indebtedness") outstanding on the Customer's deposit accounts described in the Agreement on the reverse side of this form (the "Agreement"). This Guaranty is an absolute and unconditional personal guaranty and does not require the Bank first to pursue or look to any other right or remedy that the Bank may have against the Customer or any other party.

I further acknowledge and agree that:

1. No act or thing need occur to establish my liability under this Guaranty, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate me or modify, reduce, limit or release my liability under the Guaranty. The Bank may require me to pay the indebtedness even though the Customer is able to pay such indebtedness and the Bank has taken no steps to collect it from the Customer.
2. I waive notice of acceptance and of default under the Agreement, and I agree that the Bank may, without notice to me or my consent, extend the time for payment, grant waivers, change the terms of the Agreement or compromise any dispute with the Customer.
3. If I die, am declared legally incompetent, or become bankrupt, the indebtedness owed to the Bank under the Agreement will be due immediately. My heirs or legal representatives will be responsible to use the assets they receive from me or my assets to pay the indebtedness to the Bank. If I voluntarily commence (or there is commenced involuntarily against me) a petition or case under the United States Bankruptcy Code, the full amount of all indebtedness, whether due and payable or un-matured, shall be immediately due and payable without demand or notice.
4. I will be responsible for all indebtedness and, in addition, for any and all attorney's fees and collection costs incurred by the Bank in connection with enforcing this Guaranty and/or collecting the indebtedness from me or the Customer.
5. My responsibility will not be reduced because of any claim or defense the Customer may have against the Bank, except the defense that the indebtedness has been fully paid. I will not exercise or enforce any subrogation or other legal rights that I may have against the Customer or any other guarantor unless and until the indebtedness has been fully paid.
6. This Guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by me and the Bank. This guaranty is issued in Minnesota and shall be governed by its laws. I waive notice of the Bank's acceptance of this Guaranty and waive(s) the right to a trial by jury in any action based on or pertaining to this Guaranty.

This Guaranty shall be enforceable against me and each person signing this guaranty, even if only one person signs and regardless of any failure of any other person to sign this guaranty. If there is more than one signer, all agreements and promises contained in this Guaranty shall be constructed to be, and are declared to be, joint and several in each of every particular respect and shall be fully binding upon and enforceable against either, any or all the undersigned individuals.

- This Guaranty is unsecured
 This Guaranty is secured

Signed

Dated

Signed

Dated

Signed

Dated