

## ACH Origination Agreement for Consumer Payments

**This ACH Origination Agreement for Consumer Payments** (the “Agreement”) is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by and between \_\_\_\_\_ (“Company”) and \_\_\_\_\_ BankFinancial, F.S.B. (“BankFinancial”).

### RECITALS

- A. Company has requested that BankFinancial permit Company to initiate electronic signals for paperless entries through BankFinancial to accounts maintained at BankFinancial and at other financial institutions by means of the Automated Clearing House Network (the “ACH”) pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association, as amended from time to time (“the Rules”).
- B. BankFinancial is willing to permit Company to initiate electronic signals for paperless entries through BankFinancial to accounts maintained at BankFinancial and at other financial institutions by means of the ACH pursuant to the terms of this Agreement and the Rules.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the Rules.

### AGREEMENT

**Section 1. Transmittal of Entries by Company.** Company shall transmit credit and debit Entries to BankFinancial to the location(s) and in compliance with the formatting and other requirements as set forth in Schedule A attached hereto.

**Section 2. Security Procedures.**

(a) Company and BankFinancial shall comply with the security procedure requirements described in Schedule B attached hereto with respect to Entries transmitted by Company to BankFinancial. Company acknowledges that the purpose of such security procedures is for verification of authenticity and not to detect an error in the transmission or content of an Entry. No security procedures for the detection of any such error have been agreed upon between BankFinancial and Company.

(b) Company is strictly responsible to establish and maintain procedures to safeguard against any unauthorized transmissions. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices and related instructions provided by BankFinancial. If Company believes or suspects that any unauthorized person has accessed any such information or instructions, Company agrees to notify BankFinancial immediately followed by written confirmation. The occurrence of unauthorized access

will not affect any transfers made in good faith by BankFinancial prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

**Section 3. Compliance with Security Procedures.**

(a) If an Entry received by BankFinancial purports to have been transmitted or authorized by Company, it will be deemed effective as Company's Entry and Company shall be obligated to pay BankFinancial the amount of such Entry even though the Entry was not authorized by Company. If signature comparison is to be used as a part of those security procedures, BankFinancial shall be deemed to have complied with that part of such procedures if it compares the signature accompanying a file of Entries received with the signature of an authorized representative of Company (an "Authorized Representative") and, on the basis of such comparison, believes the signature of Company sending such file to be that of such Authorized Representative.

(b) If an Entry received by BankFinancial was transmitted or authorized by Company, Company shall pay BankFinancial the amount of the Entry, whether or not BankFinancial complied with the security procedures referred to in Schedule B with respect to that Entry.

**Section 4. Settlement.** Company shall maintain an account with BankFinancial at all times during the term of this Agreement. Company will maintain in their account available funds sufficient to cover all credit entries initiated by it. BankFinancial may debit any account maintained by Company at BankFinancial to satisfy any amount owed to BankFinancial.

**Section 5. Provisional Credit.** Company acknowledges and agrees that the Rules make provisional any credit given for any entry until BankFinancial or any other financial institution crediting the account specified in the entry receives final settlement. If BankFinancial or any financial institution does not receive final settlement, it is entitled to a refund from the credited party and the originator of the entry shall not be deemed to have paid the party.

**Section 6. Rejection of Entries.** BankFinancial shall reject any entry, including any on-us entry, which does not comply with the requirements of Section 1 or Section 2 of this Agreement and may reject any entry if Company is not otherwise in compliance with the terms of this Agreement or the Rules. BankFinancial shall notify Company by telephone of such rejection no later than the business day BankFinancial would otherwise have transmitted such entry. BankFinancial shall have no liability to Company because of the rejection of any entry or the fact that such notice is not given at an earlier time than that provided for herein. BankFinancial shall retain the right to reject any on-us transaction for any valid reason, such as but not limited, to insufficient funds or revoked authorization.

**Section 7. File Cancellation or Amendment.** Company shall have no right to cancel or amend any entry/file after its receipt by BankFinancial. However, BankFinancial shall use reasonable efforts to act on a request by Company to cancel an entry/file before transmitting it to the ACH or crediting an on-us entry. Any such request shall comply

with the security procedures described on Attachment A to the Agreement. BankFinancial shall have no liability if it fails to effect the cancellation.

**Section 8. Notice of Returned Entries & Requests to Correct Information.**

BankFinancial shall notify Company by telephone or fax of the receipt of a returned entry or Notice of Correction (“NOC”) from the ACH no later than one business day after the business day of such receipt. BankFinancial shall have no obligation to retransmit a returned entry if BankFinancial complied with the terms of this Agreement with respect to the original entry. If a customer of Company returns any transaction, then it is Company's responsibility to collect any funds that are owed. In the event an entry is returned for correction, Company agrees to make said correction before transmitting subsequent live entry to the receiver. Company agrees not to originate a transaction where authorization has been revoked. In the event, a return entry or NOC sent to the company is in error, the company will notify the BankFinancial within one business day of entry receipt.

**Section 9. Periodic Statement.** The periodic statement issued by BankFinancial for Company's account will reflect entries credited and debited to Company's account. Company agrees to notify BankFinancial within a reasonable time *not to exceed thirty days* after Company receives a periodic statement of any discrepancy between Company's records and the information in the periodic statement.

**Section 10. Fees.** Company agrees to pay BankFinancial for services provided under the Agreement in accordance with the schedule of charges attached to this Agreement as Attachment D. BankFinancial may change its fees from time to time without notice to Company.

**Section 11. Company Representations And Agreements & Indemnity.** With respect to each and every Entry initiated by Company, Company represents and warrants to BankFinancial and agrees that (a) each person shown as the Receiver on an Entry received by BankFinancial from Company has authorized the initiation of such Entry and the crediting of its account in the amount and on the Effective Entry Date shown on such Entry, (b) such authorization is operative at the time of transmittal or crediting by BankFinancial as provided herein, (c) Entries transmitted to BankFinancial by Company are limited to those types of credit Entries set forth in Section 1, (d) Company shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including the sanctions laws administered by OFAC, and (e) Company shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of an Entry by the Receiving Depository BankFinancial to the Receiver provisional until receipt by the Receiving Depository BankFinancial of final settlement for such Entry. Company specifically acknowledges that it has received notice of the Rules regarding provisional payment and of the fact that, if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and Company shall not be deemed to have paid the Receiver the amount of the Entry. Company shall indemnify BankFinancial against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising

out of any breach of any of the foregoing representations or agreements.

**Section 12. BankFinancial Responsibilities; Liability; Limitations on Liability; Indemnity.**

(a) In the performance of the services required by this Agreement, BankFinancial 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 thereof. BankFinancial shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its gross negligence or willful misconduct in performing those services. BankFinancial shall not be responsible for Company's acts or omissions or those of any other person, including, without limitation, any Federal Reserve Bank, ACH Operator or transmission or communications facility, any Receiver or RDFI and no such person shall be deemed BankFinancial's agent. Company agrees to indemnify BankFinancial against any loss, liability, or expense (including attorneys' fees and costs) resulting from or arising out of any claim or any person that the BankFinancial is responsible for any act or omission of Company.

(b) BankFinancial shall be liable only for Company's actual damages due to claims arising solely from BankFinancial's obligations to Company with respect to Entries transmitted pursuant to this Agreement. In no event shall BankFinancial be liable for any consequential, special, incidental, punitive, or indirect loss or damage which Company may incur or suffer in connection with this Agreement, whether or not the likelihood of such damages was known or contemplated by the BankFinancial and regardless of the legal or equitable theory of liability which Company may assert, including without limitation loss or damage from subsequent wrongful dishonor resulting from BankFinancial's acts or omissions pursuant to this Agreement.

(c) Without limiting the generality of the foregoing provisions, BankFinancial 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 communication facilities, equipment failure, war, emergency conditions or other circumstances beyond BankFinancial's control. In addition, BankFinancial shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in BankFinancial's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in BankFinancial's reasonable judgment otherwise would violate any provision of any present or future risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

**Section 13. Inconsistency of Name and Account Number.** Company acknowledges and agrees 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 the account number identifies a person different from the named Receiver.

**Section 14. Date Retention.** Company shall retain data on a file adequate to permit remaking of entries for five business days following the date of its transmittal to BankFinancial and shall provide such data to BankFinancial upon its request.

**Section 15. Termination.** Company may terminate this Agreement at any time. Such termination shall be effective on the second business day following the day of BankFinancial's receipt of written notice of such termination. BankFinancial reserves the right to terminate this Agreement immediately upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of BankFinancial's rights and Company's obligations with respect to Entries initiated by Company before such termination, or the payment obligations of Company with respect to services performed by BankFinancial before termination, or any other obligations that survive termination of this Agreement.

**Section 16. Entire Agreement.** This Agreement (including the Schedules attached hereto) together with BankFinancial's Account Agreement (the "Account Agreement"), is the complete and exclusive statement of the agreement between BankFinancial and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between BankFinancial and Company with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement and the Account Agreement, the terms of this Agreement shall govern. In the event performance of the services provided herein in accordance with the terms of this Agreement would result in a violation of any present or future statute, regulation or government policy to which BankFinancial is subject, and which governs or affects the transactions contemplated by this Agreement, then this Agreement shall be deemed amended to the extent necessary to comply with such statute, regulation or policy, and BankFinancial shall incur no liability to Company as a result of such violation or amendment. No course of dealing between BankFinancial and Company will constitute a modification of this Agreement, the Rules, or the security procedures or constitute an agreement between the BankFinancial and Company regardless of whatever practices and procedures BankFinancial and Company may use.

**Section 17. Non-Assignment.** Company may not assign this Agreement or any of the rights or duties hereunder to any person without BankFinancial's prior written consent.

**Section 18. Waiver.** BankFinancial may waive enforcement of any provision of this Agreement. Any such waiver shall not affect BankFinancial's rights with respect to any other transaction or modify the terms of this Agreement.

**Section 19. Headings.** Headings are used for reference purposes only and shall not be deemed a part of this Agreement.

**Section 20. 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.

**Section 21. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Company: \_\_\_\_\_

Authorized Signer: \_\_\_\_\_  
(signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BankFinancial, F.S.B.

Bank Officer: \_\_\_\_\_  
(signature)

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SCHEDULE A: ACH Processing Deadlines

### Processing deadline for:

#### Credit Entries

Transmission of a file: Until 11:00 a.m. two (2) business days prior to effective date.

#### **Debit Entries**

Transmission of a file: Until 11:00 a.m. one (1) business day prior to effective date.

**“Business day” is a day the Bank is open to the public for carrying on substantially all of its business (other than Saturday, Sunday, or listed holidays). “Effective date” must be a business day or the record will be processed on the first business day following the effective date.**

### Holiday Schedule (Non-Processing Days)

New Year’s Day  
Martin Luther King Jr. Day  
Presidents’ Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans’ Day  
Thanksgiving Day  
Christmas Day

All files will be formatted in a NACHA format. *BankFinancial* will establish transmission specifications.

## SCHEDULE B: Security Procedures

The Financial Institution shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative, and any such communication shall be deemed to have been signed by such person.

### **Personal Computer File Transmission**

The Company's Authorized Representative as noted on the Corporate Resolution will gain access to the ACH system by utilizing the prearranged log on procedures, IDs, and Passwords.

The Company is solely responsible for the accurate creation, modification, and deletion of the account information maintained on the ACH system, and any personal computer(s) or network(s) used for ACH money transfer. The Company agrees to comply with written procedures provided by the Financial Institution for the creation, maintenance, and initiation of ACH money transfers.

The Company is solely responsible for operator security procedures by its employees on personal computer(s) or network(s) that have access to the Internet and ACH money transfers via the Internet.

SCHEDULE C: ACH Contact and Transmission Information

Primary ACH Processing Contact:

Name: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

Secondary ACH Processing Contact:

Name: \_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

ACH Schedule:

(Put an X in the day of the week that files are sent. If more than one file is sent, put more than one X.)

| <b>Monday</b> | <b>Tuesday</b> | <b>Wednesday</b> | <b>Thursday</b> | <b>Friday</b> |
|---------------|----------------|------------------|-----------------|---------------|
|               |                |                  |                 |               |

Specific Dates of the month: \_\_\_\_\_

(If files are sent on specific dates, please indicate those dates.)

SCHEDULE D: Fee Schedule

|  |                |
|--|----------------|
| Per Transmission or File                     | <u>\$15.00</u> |
| Per Transaction Originated**                 | <u>\$ .20</u>  |
| Return Items (each)                          | <u>\$ 5.00</u> |
| Return Prenotes (each)                       | <u>\$ 2.00</u> |
| Notifications of Change (each)               | <u>\$ 2.00</u> |
| Reversal Fee                                 | <u>\$ 5.00</u> |
| Tax Payment                                  | <u>\$ 2.50</u> |
| Credit Items Originated                      | <u>\$ .20</u>  |
| Debit Items Originated                       | <u>\$ .20</u>  |
| Prenote Items Originated                     | <u>\$ .20</u>  |
| Notification of Change<br>Non-Compliance Fee | <u>\$10.00</u> |

\*Fees may be modified without notice.

\*\*The Per Transaction Originated fee of \$ .20 only applies to Analysis Checking Accounts. For Small Business Accounts, please refer to the Business Services Brochure.