



## **Addendum 2**

### **ACH Origination Agreement**

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ ("Client") and Affinity Bank ("Bank").

Client has requested that Bank permit it to initiate debit and credit Entries by means of the Automated Clearing House ("ACH") Network pursuant to the terms of this Agreement, and the operating rules and operating guidelines, as amended from time to time, of the National Automated Clearing House Association ("NACHA") and any local or regional ACH Association (together with the NACHA operating rules and operating guidelines, the "ACH Rules"), and Bank is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries.

Unless otherwise defined herein, capitalized terms shall have the meanings provided in the ACH Rules or Regulation E, 12 C.F.R. Part 205. The term "Entry" shall have the meaning provided in the ACH Rules and shall also mean the data received from Client hereunder from which Bank prepares Entries.

In consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

#### **1. ACH Rules**

Client acknowledges receipt of a copy of, or has access to, and agrees to comply with and be bound by the ACH Rules, whether or not an Entry is sent through the ACH Network. Client acts as Originator and Bank acts as ODFI with respect to Entries. The ACH Rules govern if they conflict with this Agreement.

#### **2. Transmission of Entries**

Client may transmit CCD (Cash Concentration or Disbursement) and PPD (Prearranged Payment & Deposit) Entries pursuant to this Agreement. Client shall transmit any such Entries to Bank at the location and on or before the deadlines described in Attachment 3 (Processing Schedule). Client will conform all Entries to the format, content and specifications contained in the ACH Rules and in accordance with the security procedures described in Attachment 1 (Security Procedures) to this Agreement. Client authorizes Bank to transmit all Entries received by Bank from Client in accordance with the terms of this Agreement and to credit or debit Entries to the specified accounts. Client agrees that its ability to originate Entries under this Agreement is subject to exposure limits in accordance with the ACH Rules. The total dollar amount of Entries transmitted, frequency of origination and debits or credits originated by Client to Bank shall comply with the limits set forth in Attachment 3 (Processing Schedule) to this Agreement.

#### **3. Prenotifications**

If Client chooses to originate non-dollar prenotification Entries to verify the accuracy of routing and account numbers, it agrees not to initiate live dollar Entries until at least 6 banking days following the settlement date of the prenotification Entry. Prenotifications will be provided to Bank in the format provided in the Rules. If Client receives notice that a prenotification has been rejected or returned, Client will research the problem and make any necessary corrections before transmitting another Entry.

#### **4. Security Procedures**

- a. Client and Bank shall comply with the security procedures described in Attachment 1 (Security Procedures) to this Agreement with respect to Entries transmitted by Client to Bank. Client 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 Bank and Client.

- b. Client and/or Client's authorized representative(s), whose names and signatures are set forth on Attachment 2 (ACH Authorized Signature Form) to this Agreement ("Authorized Representative"), will access the Business Internet Banking System and transmit Entries through use of Client's user ID, password, Go ID Token and/or other access devices or authentication techniques as Bank may require from time to time ("Access Codes"). Client is strictly responsible to establish and maintain the procedures to safeguard against unauthorized transmissions. Client represents and 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 user IDs, passwords, codes, security devices and related instructions provided by Bank in connection with the security procedures described in Attachment 1 (Security Procedures). If Client believes or suspects that any such information or instructions have been known or accessed by unauthorized persons, Client agrees to notify Bank immediately followed by written confirmation. Bank is not responsible for transfers made in good faith prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers.

## 5. Compliance with Security Procedures

- a. If an Entry (or a request for cancellation or amendment of an Entry) received by Bank purports to have been transmitted or authorized by Client, it will be deemed effective as Client's Entry (or request) and Client shall be obligated to pay Bank the amount of such Entry even though the Entry (or request) was not authorized by Client, provided Bank accepted the Entry in good faith and acted in compliance with the security procedures referred to in Attachment 1 (Security Procedures) to this Agreement with respect to such Entry. If signature comparison is to be used as a part of those security procedures, Bank shall be deemed to have complied with that part of such procedures if it compares the signature accompanying a file of Entries (or request for cancellation or amendment of an Entry) received with the signature of an Authorized Representative of Client and, on the basis of such comparison, believes the signature of Client sending such file to be that of such Authorized Representative.
- b. If an Entry (or request for cancellation or amendment of an Entry) received by Bank was transmitted or authorized by Client, Client shall pay Bank the amount of the Entry, whether or not Bank complied with the security procedures referred to in Attachment 1 (Security Procedures) to this Agreement with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Bank had complied with such procedures.

## 6. Bank Obligations

- a. Except with respect to On-Ups Entries, as defined below, and as provided in Section 10, (Rejection of Entries), Bank shall in a timely manner and in accordance with this Agreement and the ACH Rules (i) process Entries received from Client to conform with the file specifications set forth in the ACH Rules, (ii) transmit such Entries received by Bank to an ACH Operator, and (iii) settle to the appropriate account at Bank for such Entries.
- b. Bank shall transmit Entries to the ACH Operator by the deadline of the ACH Operator at least one (1) Business Day prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received by Bank's related cut-off time set forth in Attachment 3 (Processing Schedule) on a Business Day, (ii) the Effective Entry Date is at least one (1) day, in the case of debit files, or two (2) days in the case of credit files, after the Business Day on which Bank receives the Entry, and (iii) the ACH Operator is open for business on such Business Day. Entries shall be deemed received by Bank when the electronic file transmission containing such Entries (and compliance with any related security procedure provided for herein) is complete and concluded in the discretion of Bank.
- c. If any of the requirements of clause (i), (ii) or (iii) of Section 5(b) hereunder are not met, Bank shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator, which is a Business Day and a day on which the ACH Operator is open for business.
- d. Except as provided in Section 10 (Rejection of Entries), in the case of an Entry received for credit or debit to an account maintained with Bank (an "On-Ups Entry"), Bank shall credit or debit the Receiver's account in the amount of such Entry on the Effective Entry Date contained in such Entry, provided the requirements set forth in clauses (i) and (ii) of Section 5(b) are met. If either of those requirements is not met, Bank shall use reasonable efforts to credit or debit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

7. **Representations, Warrants, and Agreements; Indemnity**

- a. Client acknowledges that its ability to originate Entries under this Agreement is subject to (i) Bank's approval, (ii) receipt by Bank of all required and properly executed forms, authorizations and such other information as Bank may reasonably request from time to time in connection with this Agreement, including without limitation, such information about Client's financial condition as Bank may reasonably deem necessary to evaluate and mitigate risks with respect to Bank's obligations under this Agreement, and (iii) Client's compliance with the terms of this Agreement, the ACH Rules, and all applicable laws, regulations and orders.
- b. Client warrants to Bank all warranties Bank is deemed by the ACH Rules to make with the respect to Entries originated by Client. Without limiting the foregoing, with respect to each and every Entry transmitted by Client, Client represents and warrants to Bank and agrees that (i) each Entry is accurate and timely and otherwise complies with the ACH Rules; (ii) each person shown as the Receiver on an Entry received by Bank from Client has authorized the initiation of such Entry and the crediting or debiting of its account in the amount and on the Effective Entry Date shown on such Entry; (iii) such authorization is operative at the time of transmittal or crediting or debiting by Bank as provided herein; (iv) each debit Entry is for an amount which on the Settlement Date will be due and owing to the Originator from the Receiver, is for a sum specified by the Receiver to be paid to the Originator, or is to correct a previously transmitted erroneous credit Entry; and (v) Client shall obtain all consents and authorizations required under the ACH Rules, shall retain the original or a copy of such consents and authorizations for a period of no less than two (2) years after termination or revocation of such consents or authorizations, and will, upon request of Bank, furnish such original or copy to Bank.
- c. Client acknowledges and agrees that nothing under the terms of this Agreement gives Client the right to initiate transactions as a third-party processor, third-party sender or on behalf of another person or entity. Client represents and warrants to Bank and agrees that each and every Entry transmitted by Client is for Client's own account.
- d. Client agrees to comply with and be bound by the terms of the Electronic Funds Transfer Act and the Uniform Commercial Code Article 4A, each as applicable, and to otherwise perform its obligations under this Agreement in accordance with all applicable laws, regulations, and orders, including, but not limited to, the sanctions laws, regulations, and orders administered by the federal Office of Foreign Assets Control ("OFAC"), laws, regulations, and orders administered by FinCEN; restrictions imposed under the Unlawful Internet Gambling Enforcement Act of 2006 ("UIGEA"), and any state laws, regulations, or orders applicable to the providers of ACH payment services. It shall be the responsibility of Client to obtain information regarding such OFAC enforced sanctions, which information may be obtained directly from the OFAC Compliance Hotline at 1-800-540-OFAC. Without limiting the foregoing, with respect to each and every Entry transmitted by Client, Client represents and warrants to Bank and agrees that (a) it will not initiate any transactions in violation of the requirements or sanctions of OFAC or act on behalf of, or transmit funds to or from, any party subject to OFAC sanctions, and (b) it will not initiate any transactions in violation of or restricted under the UIGEA or its implementing regulations.
- e. Client agrees that Entries transmitted to Bank by Client are limited to those types of Entries set forth in Section 2 (Transmission of Entries) and Client represents and warrants to Bank that each and every Entry transmitted by Client shall be limited to those types of Entries allowed under the terms of this Agreement. Without limiting the foregoing, Client acknowledges that International ACH Transactions ("IATs") are not permitted under the terms of this Agreement and with respect to each and every Entry transmitted by Client, Client represents and warrants to Bank that no such Entry shall be an IAT.
- f. Client acknowledges that Bank has a responsibility and reserves the right to monitor and review Client's ACH originated activity for compliance with this Agreement, the ACH Rules and applicable laws, regulations and orders as well as for security, legal, fraud and any other legitimate purpose as permitted by law. Client agrees to provide Bank with access to Client's premises and records as well as any information reasonably requested in connection with any such review. If Client is found to be in breach of any term of this Agreement or the ACH Rules, Bank may terminate or suspend this Agreement by giving written notice of such termination or suspension, which will be effective immediately.
- g. Client represents and warrants that all information provided to Bank under the terms of this Agreement is accurate and complete as of the time it is provided. Client shall promptly notify Bank of any material changes to the information provided.

- h. Client shall indemnify and hold harmless Bank against any fine, penalty, sanction, loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing representations, warranties, or agreements.

**8. Provisional Credit**

Client acknowledges that it shall be bound by and comply with the provision of the ACH Rules (among other provisions of the ACH Rules) making payment of an Entry by the Receiving Depository Financial Institution ("RDFI") to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Client specifically acknowledges that it has received notice of the rule 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 Client shall not be deemed to have paid the Receiver the amount of the Entry.

**9. Settlement**

- a. Client will maintain an account with Bank at all times during the term of this Agreement (the "Account"). Client shall at all times maintain in the Account, as noted in Attachment 3 (Processing Schedule) to this Agreement, a balance of available funds sufficient to cover its payment obligations under this Agreement, including all credit Entries initiated by Client and any returns or adjustments to prior funds credited at the time such payment obligations are reasonably anticipated to occur. Bank may, without prior notice or demand, obtain payment of any amount due and payable to it under the Agreement by debiting the Account identified in the Attachment 3 (Processing Schedule) to this Agreement. In the event there are not sufficient available funds in the Account to cover Client's obligations under this Agreement, Client agrees that Bank may debit any account maintained by Client with Bank or any affiliate of Bank or that Bank may set off against any amount it owes to Client, in order to obtain payment of Client's obligations under this Agreement. Bank may at any time and without prior notice to Client refuse, delay or suspend payment of any credit Entries initiated by Client or any returns or adjustments to prior funds credited if the applicable Account does not contain sufficient funds to cover such payment obligations. Upon request of Bank, Client agrees to promptly provide to Bank such information pertaining to Client's financial condition as Bank may reasonably request.
- b. Client grants Bank a security interest in the Account to secure all debt and obligations Client owes Bank at all times the Account is open. Client also agrees that all collateral it currently has pledged or may hereafter pledge to Bank will secure all current or future debt and obligations due and owing Bank. Client further agrees that it will execute and deliver any additional documents Bank deems necessary in its sole discretion to perfect the lien(s) granted by Client.

**10. Cancellation or Amendment**

Client shall have no right to cancel or amend any Entry after its receipt by Bank. However, if such request complies with the security procedures described in Attachment 1 (Security Procedures) for the cancellation of data, Bank shall use reasonable efforts to act on a request by Client for cancellation of an Entry prior to transmitting it to the ACH Operator, 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 effected. Client shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the cancellation or amendment of an Entry.

**11. Rejection of Entries**

Bank will reject any Entry, including any On-Us Entry, which does not comply with the requirements of Section 2 (Transmission of Entries) or Section 3 (Security Procedures). Bank may reject an On-Us Entry for any reason for which an Entry may be returned under the ACH Rules, including but not limited to, insufficient funds or revoked authorization. Bank may reject any Entry if Client has failed to comply with its Account balance obligations under Section 8 (Settlement). Bank shall notify Client by telephone or email of such rejection no later than the Business Day such Entry would otherwise have been transmitted by Bank to the ACH Operator, or in the case of an On-Us Entry, its Effective Entry Date. Notice of rejection shall be effective when given. Bank shall have no liability to Client by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

**12. Notice of Returned Entries and Requests to Correct Information (NOCs)**

- a. Bank shall notify Client by telephone, email, or fax of the receipt of a returned Entry from the ACH Operator no later than one (1) Business Day after the Business Day of such receipt. Except for an Entry retransmitted by Client in accordance with the requirements of Section 2 (Transmission of Entries), Bank shall have no obligation to retransmit a returned Entry to the ACH Operator if Bank complied with the terms of this Agreement with respect to the original Entry. Bank shall provide Client all information, as required by the

ACH Rules, with respect to each Notification of Change Entry (“NOC”) or Corrected Notification of Change Entry (“Corrected NOC”) received by Bank relating to Entries transmitted by Client. Bank will provide such information to Client within two (2) Business Days of the Settlement Date of each NOC or Corrected NOC Entry.

- b. If a Client of Client returns any transaction, then it is Client’s responsibility to collect any funds that are owed. Client shall ensure that changes requested by the NOC or Corrected NOC are made prior to initiating another Entry to the Receiver’s account. If Client desires to refuse a NOC, then Client must provide to Bank the reason for the refusal of the NOC, along with the applicable reason code as specified in the ACH Rules in order for Bank to notify the RDFI that the NOC has been refused. Client further agrees to familiarize itself with all the provisions of the ACH Rules regarding refused NOCs and to comply fully therewith. In the event, a return Entry or NOC sent to Client is in error, Client will notify Bank within one (1) Business Day of receipt of the Entry or NOC. Client agrees not to originate a transaction where authorization has been revoked.

### 13. **Reversals**

Should Bank be unable to stop from posting an Entry with respect to which Client has requested cancellation or amendment or should Bank be unable to withdraw the Entry from the ACH Operator, Client may initiate a reversal to correct the Entry, as provided for and abiding by the ACH Rules. Where Client initiates a reversal for an individual Entry or Entries, as opposed to a reversal with respect to a complete file of Entries, the Receiver(s) of the Entries must be notified of the reversal no later than the Settlement Date of the reversing Entries. Should a reversal be created for a complete file of Entries, Client must advise Bank within five (5) Business Days of Settlement.

Reversals do not guarantee that the funds will be returned to Client and Bank shall have no liability if such reversal is not effected. Client shall reimburse Bank for any expenses, losses, or damages Bank may incur in effecting or attempting to effect the reversal of an Entry.

### 14. **Payment by Client for Entries; Payment by the ODFI for Entries**

- a. Client shall pay Bank the amount of each credit Entry transmitted by Bank pursuant to this Agreement at such time on the date of submittal by Bank with respect to such credit Entry as Bank, in its discretion, may determine.
- b. Client shall promptly pay Bank the amount of each debit Entry returned or adjusted by an RDFI that was transmitted by Bank pursuant to this Agreement.
- c. Bank shall pay Client the amount of each debit Entry, including each On-Ups Entry, transmitted by Bank pursuant to this Agreement at such time on the Effective Entry Date with respect to such debit Entry as Bank, in its discretion, may determine.
- d. Bank shall pay Client the amount of each credit Entry returned or adjusted by an RDFI that was transmitted by Bank pursuant to this Agreement at such time on the Effective Entry Date with respect to such credit Entry as Bank, in its discretion, may determine.

### 15. **Periodic Statement; Account Reconciliation**

Entries transmitted by Bank or credited to a Receiver’s account maintained with Bank will be reflected on Client’s periodic statement issued by Bank with respect to the Account pursuant to the agreement between Bank and Client. Client agrees to notify Bank promptly of any discrepancy between Client’s records and the information shown on any periodic statement. If Client fails to notify Bank of any discrepancy within fourteen (14) days of receipt of a periodic statement containing such information, Client agrees that Bank shall not be liable for any losses resulting from Client’s failure to give such notice or any loss of interest or any interest equivalent with respect to an Entry shown on such periodic statement. If Client fails to notify Bank of any such discrepancy within fourteen (14) days of receipt of such periodic statement, Client shall be precluded from asserting such discrepancy against Bank.

### 16. **Payment for Services**

Client agrees to pay Bank the fees for services (“Service Fees”) provided under this Agreement in accordance with the schedule of charges attached to this Agreement as Attachment 4 (Fee Schedule). Bank may change its Service Fees from time to time upon prior notice to Client. Such Service Fees do not include, and Client shall be responsible for payment of, any sales, use, excise, value-added, utility or other similar taxes relating to such services, and any fees or charges provided for in the agreement between Bank and Client with respect to the Account (the “Account Agreement”).

17. **Liability; Limitations of Liability; Indemnity**

- a. Bank 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. In the performance of the services required by this Agreement, Bank shall be entitled to rely solely on the information, representations, and warranties provided by Client pursuant to this Agreement, and shall not be responsible for the accuracy or completeness thereof. Bank shall not be responsible for Client's acts or omissions (including, without limitation, the amount, accuracy, timeliness of transmittal or authorization of any Entry received from Client) or those of any other person, including, without limitation, any Federal Reserve Bank, ACH Operator, or transmission or communications facility, any Receiver or RDFI (including, without limitation, the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Bank's agent. Client agrees to indemnify Bank against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that Bank is responsible for, any act of omission by Client or any other person described in this Section 16(a).
- b. Bank shall have no liability for any loss or damage sustained by Client except to the extent such loss or damage is caused solely and directly by Bank's gross negligence or willful misconduct with respect to Entries transmitted pursuant to this Agreement and only to the extent that the liability is not otherwise excused or further limited by the terms of this Agreement or applicable law. All exclusions of liability hereunder shall apply regardless of the form in which a claim for loss or damages is asserted, whether in contract, tort (including negligence), warranty, or other legal or equitable grounds. Bank's liability for any and all losses hereunder shall in no event exceed the total amount paid by Client for the affected ACH service, as performed by Bank under this Agreement for the preceding thirty (30) calendar days. Subject to the foregoing limitations, Bank's liability, if any, for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds Rate at the Federal Reserve Bank of New York for the period involved. At Bank's option, payment of such interest may be made by crediting the Account.

IN NO EVENT AND UNDER NO CIRCUMSTANCES WHATSOEVER SHALL BANK BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH CLIENT MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY BANK AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY WHICH CLIENT MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM BANK'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

- c. Without limiting the generality of the foregoing provisions, Bank 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 Bank's control. In addition, Bank shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Bank's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines or in Bank'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.
- d. Client agrees to hold Bank harmless for any errors made on the part of a third party provider who creates the ACH file on behalf of Client and for any errors made directly by Client. In the event of an error, it is the responsibility of Client to pursue resolution directly with the third party processor.
- e. In the event that monetary penalties are imposed on Bank by NACHA for Client's violation of the ACH Rules, such penalties will be recovered from Client if it is deemed by Bank that the violation was caused by Client's disregard of the ACH Rules.

18. **Third Party Service Provider**

Bank shall use a TPSP to send its files to the ACH Operator. Bank shall assume full liability for any action made by its TPSP.

19. **Cooperation in Loss Recovery Efforts**

In the event of any damages for which Bank or Client may be liable to each other or to a third party pursuant to the services provided under this Agreement, Bank and Client 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.

20. **Inconsistency of Name and Account Number**

Client acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Bank to the RDFI might be made by the RDFI (or by Bank in the case of an On-Us Entry) on the basis of the account number supplied by Client, even if it identifies a person different from the named Receiver, and that Client's obligation to pay the amount of the Entry to Bank is not excused in such circumstances. It is the responsibility of Client to verify that the individual signing the ACH debit or credit agreement is in fact entitled to use the specified account.

21. **Data Retention**

Client specifically agrees to be bound by and comply with all applicable provisions of the ACH Rules regarding the retention of documents or any record, including, without limitation, Client's responsibilities to retain all items, source documents, and records of authorization in accordance with the ACH Rules. Without limiting the generality of the foregoing provision, Client shall retain data on file adequate to permit remaking of Entries for five (5) days following the date of their transmittal by Bank as provided herein, and shall provide such data to Bank upon its request.

22. **Contingency**

In the event Client cannot create or transmit an ACH file due to hardware or communications outage, it is the responsibility of Client to have contingency procedures in place including, without limitation, hand delivery of such files pursuant to the procedures provided in Attachment 1 (Security Procedures). In the event Bank cannot process the file through normal channels, Bank will use commercially reasonable efforts to find alternate means to process the file; provided, that, Bank will not be held liable for delayed files in any case resulting from hardware or communications outages.

23. **Tapes and Records**

All magnetic tapes, Entries, security procedures and related records used by Bank for transactions contemplated by this Agreement shall be and remain Bank's property. Bank may, at its sole discretion, make available such information upon Client's request. Any expenses incurred by Bank in making such information available to Client shall be paid by Client.

24. **Recording and Use of Communications**

Client agrees that all telephone conversations or data transmissions between the parties or their agents made in connection with this Agreement may be electronically recorded and retained by Bank by use of any reasonable means.

25. **Amendments; Waiver**

- a. From time to time Bank may amend any of the terms and conditions contained in this Agreement, including, without limitation, any cut-off time, any Business Day, and any part or provision of the Attachments hereto. Such amendments shall become effective upon receipt of notice by Client or such later date as may be stated in Bank's notice to Client.
- b. Bank, in its sole discretion, may waive enforcement of any term or condition of this Agreement. Any such waiver shall not affect Bank's rights with respect to any other transaction or modify the terms of this Agreement. Such waiver shall be valid only if set forth in an instrument in writing signed by Bank. Any waiver of any term or condition shall not be construed as a waiver of any subsequent breach or a subsequent waiver of the same term or condition, or a waiver of any other term or condition of this Agreement. The failure of either party hereto to assert any of its rights hereunder shall not constitute a waiver of any of such rights.

26. **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.

27. **Termination**

Either party may terminate this Agreement upon ten (10) days written notice to the other. In the event Client originated debit Entries, Client agrees to maintain an Account with Bank for a period of ninety (90) days subsequent to the Settlement Date of the last debit file originated. Any termination of this Agreement shall not affect any of Bank's rights and Client's obligations with respect to Entries initiated by Client prior to such termination, or the payment obligations of Client with respect to services performed by Bank prior to termination, or any other obligations that should survive termination of this Agreement. Bank shall have no obligation to transmit Entries if Client is in default of any of its obligations under this Agreement, including the obligation to pay Bank for each credit Entry. Bank shall be entitled to rely on any written notice believed by it in good faith to be signed by one of the Authorized Representative whose names and signatures are set forth on Attachment 2 (ACH Authorized Signature Form) to this Agreement.

28. **Entire Agreement**

This Agreement (including the Attachments hereto), together with the Account Agreement, is the complete and exclusive statement of the agreement between Bank and Client with respect to the subject matter hereof and supersedes any prior agreement(s) between Bank and Client 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 Bank 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 Bank shall incur no liability to Client as a result of such violation or amendment. No course of dealing between Bank and Client will constitute a modification of this Agreement, the ACH Rules, or the security procedures or constitute an agreement between Bank and Client, regardless of whatever practices and procedures Bank and Client may use.

29. **Non-Assignment**

Client may not assign this Agreement or any of the rights or duties hereunder to any person without Bank's prior written consent.

30. **Notices, Instructions, Etc.**

- a. Except as otherwise expressly provided herein, Bank shall not be required to act upon any notice or instruction received from Client or any other person, or to provide any notice or advice to Client or any other person with respect to any matter.
- b. Client may add or delete any Authorized Representative by written notice to Bank signed by at least two Authorized Representatives other than that being added or deleted. Such notice shall be effective on the second (2<sup>nd</sup>) Business Day following the day of Bank's receipt.
- c. Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be hand delivered or sent by facsimile or United States registered or certified mail, postage prepaid, or by express carrier addressed as follows:

**For notices to Bank:**

Attention: Deposit Operations  
Affinity Bank  
400 Galleria Parkway SE, Suite 900  
Atlanta, GA 30339

**For notices to Client:**

Attention: \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State, and Zip: \_\_\_\_\_

unless another address is substituted by notice, delivered or sent as provided herein. Except as otherwise expressly provided herein, any such notice shall be deemed given when received.



31. **Binding Agreement**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns.

32. **Third Party Beneficiaries**

This Agreement shall not be construed to confer any rights or remedies upon any person not a party to this Agreement, whether as a third party beneficiary or otherwise, against Bank or Client hereunder.

33. **Captions and Headings**

The captions and headings contained in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement nor shall they affect in any way the meaning or interpretation of this Agreement.

34. **Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of Georgia, without reference to its conflict of laws provisions, the ACH Rules, and applicable federal law.

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

**Affinity Bank**

**Client:** \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

## **Attachment 1: Security Procedures**

Client agrees to comply with the security procedures identified below in transmitting all Origination Files pursuant to this Agreement. Client understands that the Security Procedures are designed to verify the authenticity, and not to detect errors in transmission or content, of Origination Files. If an Origination File is authorized or issued by Client, or on Client's behalf, or Client otherwise benefits from such Origination File, Client agrees to be bound by the Origination File, whether or not Bank complies with the Security Procedures. The Security Procedures for Origination Files shall consist of the procedures Bank and Client use to verify that an Origination File has been validly issued by Client and shall include:

- a. Client warrants and agrees that no individual will be allowed to initiate and/or approve ACH transfers in the absence of proper supervision and adequate safeguards.
- b. Client agrees to maintain the confidentiality of any Security Procedures and prevent the disclosure of such procedures except on a "need to know" basis. Client shall notify Bank immediately at (678-742-9990) if Client becomes aware of or suspects that any of the procedures relating to the transfer of funds may have been compromised or disclosed.
- c. Client's unique user IDs, passwords, Go ID Token and/or other access devices or authentication techniques as Bank may require from time to time ("Access Codes") to access the Services will be provided to the Authorized Representative(s). Client agrees that Access Codes are strictly confidential and must be safeguarded. Client shall have sole responsibility for controlling the distribution and maintaining the confidentiality of the Access Codes assigned to Client. Client acknowledges that anyone with knowledge of Client's or Authorized Representatives' Access Codes will be able to issue Origination Files on Client's account. Client authorizes Bank to execute Origination Files pursuant to the instructions of anyone who has provided Bank with proper Access Codes and acknowledges that Bank shall conclusively presume that any person possessing Client's Access Codes is an Authorized Representative and will regard their Origination File as being authorized by Client. If Client becomes aware of the unauthorized use of Access Codes, or suspects that an unauthorized use may occur, or if Client has terminated authorization for an Authorized Representative, Client shall immediately notify Bank to deactivate such Access Codes and issue new Access Codes as appropriate. IN NO EVENT SHALL BANK BE RESPONSIBLE FOR ANY DAMAGES RESULTING, EITHER DIRECTLY OR INDIRECTLY, FROM THE UNAUTHORIZED USE OF THE ACCESS CODES PRIOR TO SUCH NOTICE AND A REASONABLE TIME THEREAFTER REQUIRED TO CANCEL SUCH PASSWORD(S).
- d. Bank may from time to time, and at its sole discretion, change the Security Procedures or establish additional Security Procedures.
- e. Client agrees that Bank may delay the execution of an Origination File until Bank has completed any security measures Bank, in its sole discretion, deems warranted.
- f. Client is responsible for ensuring that there are adequate software and hardware security measures in place on Client's computers to prevent initiation of fraudulent payments. Such security measures include but are not limited to anti-virus, spyware, malware, key logger detection software, firewalls, and any other "crimeware" protection programs.
- g. Client has carefully analyzed the Security Procedures which will be used in connection with Payment Orders, under the terms of this Agreement, and acknowledges the Security Procedures identified herein are a satisfactory method of verifying authenticity of Payment Orders based on Client's needs and that the Security Procedures are commercially reasonable.

### **Cancellation or Amendment**

Bank will not manipulate or modify an Entry that needs to be amended, so Client will need to cancel the Entry. Client shall have no right to cancel an Entry after its receipt by Bank. However, in the event that Client needs to cancel an Entry that has been transmitted to Bank, Client should immediately contact Bank. If the Entry has not yet been transmitted to the ACH Operator, Bank will use reasonable efforts to act on the request to cancel the Entry. Client will be required to follow-up this phone call with a written authorization detailing the Entry to be cancelled, and this written authorization must be signed by an Authorized Representative. Upon receipt of the written authorization, Bank will cancel the Entry and call Client to confirm the cancellation. Client will be responsible for initiating an Entry to replace the cancelled Entry.

## Attachment 2: ACH Authorized Signature Form

\_\_\_\_\_  
Date

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

The \_\_\_\_\_ signatures below are the signatures of employees vested by our Board of Directors with full authority to act on company's behalf with the initiating of ACH files and related requests ("Authorized Representatives").

Name	Signature
1.	
2.	
3.	
4.	
5.	

Authorized Signature \_\_\_\_\_ Title \_\_\_\_\_  
Date \_\_\_\_\_

### Exception Reporting

(A) In event of a possible security violation, contacts, including alternate are:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

(B) File discrepancies (rejects) should be reported to:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Name

\_\_\_\_\_  
Phone

### Attachment 3: Processing Schedule

#### Entry Settlement Date to Client's Account

Account Number for Settlement Purposes: \_\_\_\_\_

#### Debit Entries to Company's Account

Files submitted by Client, Funds Must Be In Account to Satisfy Debit by:

Date of Submittal

Effective Entry Date of Credit Items Contained in file

Adjustments/returns, Funds will be made available to Client on:

Effective Entry Date of Return/Adjustment

#### Credit Entries to Company's Account

Files Submitted by Client, Funds will be made Available to Client on:

Effective Entry Date of Debit Items Contained in File

Adjustments/Returns, Funds must be in account to satisfy debit by:

Effective Entry Date of Returns/Adjustments

#### File Origination Limits

Maximum File Limit	\$ _____
Maximum Item Amount Contained in File	\$ _____
File Submittal Frequency (Daily/Weekly/Monthly/etc)	_____
Maximum Returns Allowed Over 60 day Calendar Period (Debit Files only)	_____

#### Timeframe for Submission of Files

##### Debit Files

Must be received by the Financial Institution by 4:00 PM Eastern Standard Time (EST) at least one (1) Business Day prior to the Effective Entry Date.

##### Credit Files

Must be submitted to the Financial Institution by 4:00 PM Eastern Standard Time (EST) at least two (2) Business Days prior to the Effective Entry Date.

## Attachment 4: Fee Schedule

### One-time fees

Installation/Training \$ \_\_\_\_\_

### File & Transaction fees

Monthly Maintenance Fee	\$ _____ per month
File Handling	\$ _____ per file
Debit items originated PPD/CCD	\$ _____ per item
Credit items originated PPD/CCD	\$ _____ per item
Prenote items originated	\$ _____ per item
Return items	\$ _____ per item
Received Notifications of change	\$ _____ per item

## Attachment 5: Federal Reserve Bank Holiday Schedule (Non-processing days)

New Year's Day  
Martin Luther King JR's Birthday  
Presidents' Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veteran's Day  
Thanksgiving Day  
Christmas Day  
Weekends (Saturday and Sunday)

Companies should not submit or expect settlement on originated files on the days listed above.

**Attachment 6: Sample ACH Authorization Form**

**CREDIT/DEBIT AUTHORIZATION FORM**

I (we) hereby authorize \_\_\_\_\_ (THE COMPANY) to initiate entries to my (our) checking/savings accounts at the financial institution listed below (THE FINANCIAL INSTITUTION), and, if necessary, initiate adjustments for any transactions credited/debited in error. This authority will remain in effect until THE COMPANY is notified by me (us) in writing to cancel it in such time as to afford THE COMPANY and THE FINANCIAL INSTITUTION a reasonable opportunity to act on it.

\_\_\_\_\_  
(Name of Financial Institution)

\_\_\_\_\_  
(Address of Financial Institution – Branch, City, State & Zip)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Name – PLEASE PRINT)

\_\_\_\_\_  
(Address - PLEASE PRINT)

Set Amount: \_\_\_\_\_ or Maximum Amount: \_\_\_\_\_

Financial Institution Routing Number: \_\_\_\_\_

Checking/Savings Account Number: \_\_\_\_\_

These numbers are located on the bottom of your check as follows:

Ⓜ 123456789 Ⓜ 1234567890123 Ⓜ  
Routing Number Account Number