AUTOMATED CLEARING HOUSE (ACH) AGREEMENT

BANK OF NORTH DAKOTA
OPERATIONS
SFN 59706 (10-2016)

This Automated Clearinghouse Agreement (Agreement) is made between the Bank of North Dakota (BND) and

Name of Customer	Date

The customer or customers whose name(s) or trade name(s) are printed in the box labeled Name of Customer above ("Customer") has requested that BND permit it to initiate debit and credit entries to accounts maintained at BND and other financial institutions by means of the Automated Clearing House (the “ACH”) Network. BND has agreed to do so on the terms of this Agreement.

Customer and BND agree as follows:

1. **Definitions.** Unless defined in this Agreement, capitalized terms shall have the meanings provided in the Rules (as defined below).
   A. Rules. “Rules” means the rules of the National Automated Clearing House Association and Appendices to the rules of the National Automated Clearing House, as amended from time to time.

   B. Effective Entry Date. “Effective Entry Date” is the date specified by the originator on which it intends a batch of entries to be settled.

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

   D. File. “File” means a group of Entries associated with a given transmittal register and the control totals set forth therein.

   E. On-Us Entry. “On-Us Entry” means a debit or credit Entry to an account maintained at BND.

   F. Online. “Online**”** refers to use of the Internet website designated by BND used to transmit or receive electronic transactions, instructions, notices, or other communication but does not include transmissions by telephone, fax, in person, regular mail, express mail, or e-mail.

   G. Security Procedures. “Security Procedures” refers to those procedures specified on Schedule B to this Agreement and shall include any updated procedures as may be modified or added from time to time.

   H. Security-related Items. “Security-related Items” refers to information, including but not limited to Security Procedures, instructions, passwords, User identifications, and systems and equipment that interface with, connect to, or allow access to BND, its information, systems, and equipment.

   I. User. “User” means an individual conducting business on behalf of Customer.

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

3. **Compliance with the Rules and Applicable Law**. Customer's rights and obligations with respect to any Entry are governed by the Rules, this Agreement, and applicable law. Customer acknowledges receipt of a copy, or availability of, the Rules, and that Customer may obtain or purchase a copy of the Rules by contacting Customer's Regional Payments Association (RPA) or by other means available. Customer agrees to be bound by the Rules. Customer represents and warrants that it will comply with the Rules and all other applicable state and federal laws, regulations, and regulatory requirements, and that it will not transmit any Entry or engage in any act or omission that violates or causes BND to violate the Rules, applicable laws, regulations, or regulatory requirements, including, without limitation, regulations of the Office of Foreign Asset Control (OFAC), sanctions, or executive orders. BND may terminate or suspend this Agreement upon written notice and identification of a material breach by Customer of the Rules. Furthermore, BND shall have the right to initiate an audit of Customer procedures for compliance with this Service Agreement and the Rules, upon written notification to Customer.

4. Transmittal of Entries and Physical and Electronic Security Procedures.

A. Customer shall transmit any and all debit or credit Entries to BND in accordance with the Rules and this Agreement. Customer shall comply with the Security Procedures described in **Schedule B** to this Agreement. Customer acknowledges that the Security Procedures are for verification of authenticity and not to detect errors in the transmission or content of the Entry. No security practice or procedure for the detection of any such error has been agreed upon between BND and Customer. Customer authorizes BND to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until Customer has notified BND, according to notification procedures prescribed by BND, that the Security Procedures or any security device, including a hard token or fab, has been stolen, compromised, or otherwise become known to persons other than User(s) and until BND has had a reasonable opportunity to act upon such notice. Customer agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for BND to execute such transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Customer's deposit account maintained with BND, and Customer agrees and intends that the submission of transaction orders and instructions using the Security Procedures shall be considered the same as Customer's written signature in authorizing BND to execute such transaction. Customer acknowledges and agrees that Customer shall be bound by any and all Entries initiated through the use of such Security Procedures, whether authorized or unauthorized, and by any and all transactions and activity otherwise initiated by User(s), to the fullest extent allowed by law. Customer may not reinitiate entries except as prescribed by the Rules.

B. Customer shall prevent and safeguard against Security-related Items. Customer shall establish, maintain, and enforce physical and logical commercially reasonable security practices, techniques, and procedures with respect to access, storage, and maintenance to safeguard against unauthorized transmissions and unauthorized access to Security-related Items. Such practices, techniques, and procedures shall be no less than the Security Procedures set forth in this Agreement and in the Rules.

C. Without limiting the foregoing, Customer warrants that no individual will be allowed to initiate transfers without proper supervision. If Customer suspects, knows, believes, or has reason to believe that an unauthorized individual has transmitted or attempted to transmit one or more Entries or that the Security Procedures or other Security-related Items have otherwise been compromised, Customer agrees to immediately notify BND and agrees that any Entry received by BND before or within a reasonable time after such notice to BND shall be treated as authorized by Customer.

D. Customer is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Customer's possession or under Customer's control. BND 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 Customer downloads or otherwise obtains is obtained at Customer's own discretion and risk, and BND is not responsible for any damage to Customer'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. Customer is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Customer's operating systems, software, programs, and applications, and for protecting, securing, and backing up any data and information stored in or on Customer's operating systems, software, programs, applications, hard drives, and other physical media and data storage devices. BND is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Customer's operating systems or accessed through an Internet connection.

E. Customer acknowledges and agrees that it is Customer's responsibility to protect itself and to be vigilant against e-mail fraud and other internet frauds and schemes (including, without limitation, fraud commonly referred to as “phishing” and “pharming”). Customer agrees to educate its User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. Customer acknowledges that BND will never contact Customer by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event Customer receives an e-mail or other electronic communication that Customer believes, or has reason to believe, is fraudulent, Customer agrees that neither Customer nor its User(s), agents, or employees shall respond to such fraudulent e-mail, provide any information to the e-mail sender, click on any links in the e-mail, or otherwise comply with any instructions in the e-mail that may harm or compromise Customer's data, Security-related Items, or security devices. Customer agrees that BND is not responsible for any losses, injuries, or harm incurred by Customer as a result of any electronic, e-mail, or internet fraud, and Customer will indemnify and hold BND harmless for any losses, injuries, or harm caused by Customer, its User(s), agents, or employees as a result of any electronic, e-mail, or internet fraud.

F. In the event of a breach of the Security Procedure, Customer agrees to assist BND in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing BND or BND's agent access to Customer's hard drive, storage media and devices, systems and any other equipment or device that was in any way involved in the breach of the Security Procedure. Customer further agrees to provide to BND any analysis of such equipment, device, or software or any report of such analysis performed by Customer, Customer's agents, law enforcement agencies, or any other third party. Failure of Customer to assist BND shall be an admission by Customer that the breach of the Security Procedure was caused by a person who obtained access to transmitting facilities of Customer or who obtained information facilitating the breach of the Security Procedure from Customer and not from a source controlled by BND.

G. BND reserves the right to modify, amend, supplement, or cancel any or all Security Procedures, and/or to cancel or replace any Security Device, at any time and from time to time in BND's sole discretion. BND will endeavor to give Customer reasonable notice of any change in Security Procedures, provided that BND may make any change in Security Procedures without advance notice to Customer if BND, in its sole judgment and discretion, believes such change to be necessary or desirable to protect the security of BND's systems, data, and assets. Customer's implementation and use of any changed Security Procedures after any change to the Security Procedures shall constitute Customer's agreement to the change and Customer's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

H. It is acknowledged by the parties that Customer may waive the implementation of or may authorize the discontinuance of the call back from BND to a second person authorized to verify the File total and item count before the entries are processed as outlined in **Schedule B** and which are otherwise required of BND. This waiver or authorization to discontinue is set out in **Schedule E.**

5. **Third Party Service Providers.** Customer may use special equipment, services or software provided by a third party (“Service Provider”) to assist it in processing Files hereunder. If Customer uses Service Provider to transmit Files to BND and Customer and Service Provider have not entered into a Third Party Service Provider Agreement, Customer (a) agrees that Service Provider is acting as Customer's agent in the delivery of Files to BND, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with applicable state or federal law, the Rules and this Agreement, and will indemnify and hold BND harmless for the actions of the Service Provider. BND will not be liable for any losses or additional costs incurred by Customer as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Customer is solely responsible for maintaining compliance with the Service Provider's requirements, including obtaining any software updates or patches. BND's sole responsibility shall be to transmit BND-approved transactions to the ACH Operator, and BND shall not have any responsibility for any File handled by Service Provider until that point in time when BND accepts and approves a File from such Service Provider for processing. If BND authorizes Customer to use a Service Provider, the terms and conditions governing the relationship between Customer and the Service Provider shall be governed by a separate agreement between Customer and Service Provider (“Service Provider Agreement”). Customer's obligations and responsibilities under this Agreement will apply to the Service Provider and Customer's separate agreement with the Service Provider must so provide. At BND's request, Customer will provide to BND a true and exact copy of any agreement between Customer and Service Provider affecting this Agreement. Customer shall designate the Service Provider as a User and the Service Provider must also enter into a Service Provider Agreement before the Service Provider sends Files to BND. Notwithstanding the foregoing, Customer hereby authorizes BND to accept any File submitted by the Service Provider even if the Service Provider has not been designated as a User or if the Service Provider has not executed the Service Provider Agreement. Customer hereby indemnifies and holds BND harmless for any losses, damages, fines, assessments, costs and expenses incurred or suffered by BND or any other person as a result of or arising from Customer's use of Service Provider, including fines or assessments incurred under or pursuant to the Rules and attorneys' fees.

6. **Customer's Representations, Warranties, and Agreements.** Customer represents and warrants that each Entry provided to BND complies in all respects with the Rules and this Agreement. Customer acknowledges and agrees that, pursuant to the Rules, BND makes certain warranties to the ACH Operator and other financial institutions and that such warranties are made in reliance on: (i) the representations and warranties of Customer, including but not limited to those contained in this section of this Agreement and (ii) Customer's agreement to be bound by the Rules and applicable law. Customer shall indemnify BND against any claims, alleged claims, loss, liability, or expense (including attorneys' fees and expenses) resulting directly or indirectly from, related to or arising out of: (i) any breach of Customer's warranties or this Agreement; (ii) Customer's failure to exercise ordinary care in connection with its duties hereunder; (iii) any action by the Receiving Depository Financial Institution (“RDFI”) upon an unauthorized or erroneous Entry initiated by Customer; (iv) any actions by a service provider or agent of Customer that results in a breach of this Agreement by Customer; (v) to the extent that it involves BND, any litigation by an ACH Operator, an RDFI, or any Company receivers asserting noncompliance on Customer's part with the Rules, laws, regulations, or regulatory requirements. Without limiting the foregoing, Customer warrants:

A. Each Entry is authorized pursuant to the Rules and the authorization has not been revoked;

B. Each authorization is clear and in a form that is readily understandable by the receiver;

C. Copies of authorizations will be made available when requested by BND;

D. Each credit Entry is timely and accurate;

E. Each debit Entry is for a sum which, on the Settlement Date will be due and owing to Customer 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;

F. No Entry has been reinitiated in violation of the Rules;

G. If Customer intends to originate Same Day transactions notification to BND is required. Contact BND via email or telephone as listed in **Schedule A**. BND will control settlement by using Same Day Settlement Module. Customer should not assume qualified entries will automatically be processed as Same Day.

H. Customer has used commercially reasonable procedures to verify that all information contained in an Entry, including but not limited to routing numbers, is accurate and valid.

7. **BND Obligations.** Subject to Section 8 of this Agreement, BND shall, in accordance with the Rules, process, transmit, and settle for any Entry. BND shall have no obligation to transmit an Entry if Customer fails to comply with the Rules or any terms of this Agreement. BND shall rely on any and all information it receives from an Authorized Representative of Customer, as set forth in **Schedule D**, and any person BND, in good faith, reasonably believes to be acting on behalf of Customer, whether or not such person was authorized by Customer.

8. **SEC Code Processing.** BND will process all PPD, CCD, and CTX Standard Entry Class (SEC) Codes submitted by Customer that are approved by the Rules. If Customer intends to submit a File containing a different or new SEC Code, it is the responsibility of Customer to notify BND of the different or new Code because special requirements may apply prior to processing the File. In order to utilize a different or new SEC Code, BND and Customer will enter into an Addendum to the Contract outlining the special requirements.

9. **Payment for Credit Entries and Returned Debit Entries: Customer's Account.** Customer agrees to pay for all credit Entries issued by Customer, User(s), or credit Entries otherwise made effective against Customer. Customer shall make payment to BND on the date as determined by BND at its sole discretion ("Payment Date"). Customer shall pay BND for the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") or debit Entry dishonored by BND. Customer will maintain a deposit account (the "Account") with BND at all times during the term of this Agreement. Customer shall at all times maintain a balance of available funds in the Account sufficient to cover Customer's obligations under this Agreement. If collected balances in the Account are insufficient to cover the aggregate amount of Entries, BND shall have no obligation to transmit such Entries. Customer authorizes BND to debit its Account or any other account maintained at BND for any amount it owes BND as a result of this Agreement.

10. **Pre-funding.** BND reserves the right to require Customer to pre-fund an account maintained at BND prior to, or in the case of Same Day ACH entry, on the Settlement Date of the ACH File. BND shall determine whether pre-funding is required based on criteria established from time to time by BND. BND will communicate directly to Customer if pre-funding is required and, if requested by Customer, will provide Customer with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, Customer will provide immediately available and collected funds sufficient to pay all Entries initiated by Customer (a) not later than 8:00 a.m. local time ***2 banking days*** before each Settlement Date, and (b) prior to initiating any Entries for which pre-funding is required.

11. **Credit Approval and Exposure Limits.** In utilizing the ACH in performance of this Service Agreement, BND must ensure Customer meets certain criteria. Specifically, BND is charged with ensuring the financial soundness of Customer to make the intended Entries. BND may request, and Customer will comply with, a request for financial information from Customer and/or a separate credit agreement. Customer shall also authorize BND to obtain a credit report(s) on Customer as may be necessary from time to time. BND may also assign Customer a limit representing the maximum aggregate dollar amount of Entries that may be initiated by Customer each day ("Exposure Limit"). Customer acknowledges that the ACH Processing Limit is solely for the protection of BND and its assets. Customer understands that daily requests for Entries exceeding this amount are honored solely at the discretion of BND. BND will communicate to Customer or Customer's designated representative any requests not honored**.** Customer shall comply with the exposure limits as set forth in **Schedule C**. Such limits may be modified from time to time by BND at its sole discretion with notice to Customer.

12. **Prohibited Transactions.** Customer agrees not to use or attempt to use any services authorized by the Agreement (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 Customer 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. Customer acknowledges and agrees that BND has no obligation to monitor Customer's use of the services authorized by the Agreement for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that BND reserves the right to decline to execute any transaction or activity that BND believes violates the terms of this Agreement**.**

13. **Cancellation or Amendment of an Entry.** Customer shall have no right to cancel or amend any Entry after its receipt by BND. However, BND shall use reasonable efforts to act on a request by Customer to cancel an Entry before transmitting it to the ACH Operator or crediting or debiting an On-Us Entry. Any such request shall comply with this Agreement, including the Security Procedures described on **Schedule B** to this Agreement. BND shall have no liability if it fails to effect the cancellation. Customer shall reimburse, indemnify and hold harmless BND for any expenses (including attorney's fees), losses, or damages BND incurs in effecting or attempting to effect Customer's request for the cancellation of an Entry.

14. **Rejection of Entries.** BND may reject any Entry, including an On-Us Entry, that does not comply with the requirements of the Rules or this Agreement, specifically including **Schedule A** and **Schedule B** of this Agreement and may reject any Entry if Customer is not otherwise in compliance with the terms of this Agreement or the Rules. BND shall notify Customer in accordance with **Schedule A** of such rejection no later than the business day such Entry would otherwise have been transmitted by BND to the ACH Operator or, in the case of an On-Us Entry, the day before its Effective Entry Date. Notices of rejection shall be effective when given. BND shall have no liability to Customer 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.

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

16. **Reversals.** Customer may reverse a File or Entry pursuant to the Rules. If Customer reverses an Entry or File, Customer shall indemnify BND against any claim, alleged claim, demand, loss, liability, or expense (including attorney's fees) resulting directly or indirectly from such reversal.

17. **Error Detection.** BND has no obligation to discover and shall not be liable to Customer for errors made by Customer, including but not limited to errors made in identifying the receiver, or an intermediary or RDFI for errors in the amount of an Entry. BND shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Customer. Notwithstanding the foregoing, if Customer discovers that any Entry it has initiated was in error, it shall notify BND of such error. BND will make its best efforts to correct the error. In the event that Customer makes an error or issues a duplicate Entry, Customer shall indemnify, defend all claims, and hold BND harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by BND as result of the error or issuance of duplicate Entries.

18. **Notice of Returned Entries and Notifications of Change.** BND shall notify Customer of the receipt of a returned Entry or Notification of Change (NOC) from the ACH Operator no later than one business day after the business day of such receipt. BND shall have no obligation to retransmit a returned Entry if BND complied with the terms of this Agreement with respect to the Entry.

19. **Entries Returned as Unauthorized.** In the event that an Entry is returned as unauthorized or authorization revoked, Customer will contact the necessary parties and resolve any dispute. During this process Customer may ask BND to request from the RDFI a copy of the “Written Statement of Unauthorized ACH Debit.” BND will make its best effort to obtain the form and will deliver it to Customer when received. Customer agrees not to re-originate any transaction returned as unauthorized or as authorization revoked unless Customer reauthorized the Entry or Entry stream.

20. **Unauthorized Rate in Excess of .5%.** In the event the rate of unauthorized transactions exceeds .5% based on the calculations noted in the Rules, Customer will share whatever data BND requests based on the Rules and will immediately begin the process of bringing the rate below .5%.

21. **Administrative Returns.** In the event the rate of administrative returns exceeds 3% for any two calendar months or 60 day period, Customer will share any data BND requests based on the Rules. If BND determines remediation is necessary Customer will develop and implement a plan to reduce that figure to under 3% within a reasonable amount of time.

22. **Overall Return Rate.** In the event that the overall rate of returns is greater than 15% for any two calendar months or 60 day period, Customer will share any data BND requests based on the Rules. If BND determines that remediation is necessary Customer will develop and implement a plan to reduce that figure to under 15% within a reasonable amount of time.

23. **Periodic Statement.** The periodic statement issued by BND for Customer's account will reflect Entries credited and debited to Customer's account. Customer agrees to notify BND within a reasonable time not to exceed thirty (30) days after Customer receives a periodic statement of any discrepancy between Customer's records and the information in the periodic statement. If Customer fails to notify BND of any such discrepancy within thirty (30) days after receipt of such periodic statement, Customer shall be precluded from asserting any claim against BND arising from such discrepancy.

24. **Fees.** Customer agrees to pay BND for services provided under this Agreement in accordance with the fee schedule located on the BND Direct Website. BND may change its fees from time to time in its sole discretion upon notice to Customer.

25. **Financial Information and Audit.** BND may from time to time request information from Customer in order to evaluate a continuation of the service to be provided by BND hereunder and/or adjustment of any limits set by this agreement. Customer agrees to provide the requested financial information immediately upon request by BND, in the form required by BND. Customer authorizes BND to investigate or reinvestigate at any time any information provided by Customer in connection with this agreement or the service. Customer hereby authorizes BND to enter Customer's business premises upon request by BND for the purpose of ensuring that Customer is in compliance with this Agreement. Customer specifically authorizes BND to perform an audit of Customer's operational controls, risk management practices, staffing and the need for training and ongoing support, and information technology infrastructure. Customer hereby acknowledges and agrees that BND shall have the right to mandate specific internal controls at Customer's location(s) and Customer shall comply with any such mandate. In addition, Customer hereby agrees to allow BND to review available reports of independent audits performed at Customer location related to information technology, the service and any associated operational processes. Customer agrees that if requested by BND, Customer will complete a self-assessment of Customer's operations, management, staff, systems, internal controls, training and risk management practices that would otherwise be reviewed by BND in an audit of Customer. If Customer refuses to provide the requested financial information, or if BND concludes, in its sole discretion, that the risk of Customer is unacceptable, if Customer violates this agreement or the rules, or if Customer refuses to give BND access to Customer's premises, BND may terminate the service and this Agreement.

26. **Liability.** In the performance of the services required by this Agreement, BND shall be entitled to rely solely on the information, representations, and warranties provided by Customer pursuant to this Agreement and shall not be responsible for the accuracy or completeness of such information. Except as otherwise specifically provided by law, BND 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 BND have any liability for any consequential, special, incidental, punitive, or indirect damages Customer may incur or suffer in connection with this Agreement whether or not the likelihood of such damages was known or contemplated by BND and regardless of the legal or equitable theory of liability Customer may assert. Without limiting the foregoing, BND shall not be liable for and 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, acts of terror, emergency conditions, or other conditions beyond BND's control. To the extent allowed by law, BND shall not be liable for and shall be excused from failing to transmit or for any delay in transmitting an Entry (i) if such transmittal would result in BND's having exceeded any limitation upon its intra-day net funds position established pursuant to present or future Federal Reserve guidelines; (ii) if, for any reason, the ACH Operator fails or declines to process an Entry; (iii) if, in BND's sole discretion, processing an Entry would violate or contribute to the violation of any present or future risk control program of the Federal Reserve or any of the Rules, law, regulation, or regulatory requirement; or (iv) if processing an Entry, in BND's sole discretion, would cause it to engage in an unsafe and unsound practice.

27. **Credit and Debit Entries - Record Retention.** Customer 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 Customer. Customer 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, Customer shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules.

28. **Rules Enforcement.** In the event that a Report of Possible Rules Violation as defined by the Rules is filed on Customer, Customer will take appropriate steps to correct the problem within the time frames suggested by BND. In the event that a fine is levied against BND for a violation of the Rules, Customer agrees to make BND whole for the value of the fine.

29. **Inconsistency of Name and Account Number.** Customer 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 it identifies a person different from the named receiver, and Customer's obligation to pay the amount of the Entry to BND is not excused in such circumstances.

30. **Miscellaneous.** BND may amend the terms of this Agreement from time to time upon thirty (30) days written notice to Customer. BND may terminate this Agreement at any time for any reason, in its sole discretion, without liability. Customer may terminate this Agreement upon ten (10) days written notice to BND except that Customer may terminate the Agreement immediately if BND materially breaches the terms of the Agreement. Any termination of this Agreement shall not affect any of BND's rights and Customer's obligations with respect to Entries initiated by Customer prior to the effective time of such termination or the payment of obligations of Customer with respect to services performed by BND prior to the effective time of such termination or any other obligations that shall survive termination. The provisions of this Agreement that are necessary to give effect to the purposes of this Agreement and all provisions regarding indemnification and release of liability shall survive its termination. BND may assign this Agreement or any of its rights and duties hereunder without prior notice to or consent by Customer, but Customer may not assign this Agreement or any of the rights or duties hereunder to any person without BND's prior written consent. This Agreement shall be governed by and construed in accordance with the laws of the state of North Dakota. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. This Agreement may be executed by a party by electronic or facsimile transmission of the party's signature, and said electronic or facsimile copy shall have the same force and effect as any originally-signed document delivered in person. 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. If Customer is an agency or department of the State of North Dakota enrolling in this Service, any limitation of liability or indemnification between the parties as set forth in this Agreement is limited to the extent permitted under North Dakota law and subject to available appropriations.

31. **Recording and Use of Communications.** Customer and BND agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be electronically recorded and retained by either party by use of any reasonable means. BND shall not be obligated to make such recordings.

32. **Data Retention.** Customer shall retain all necessary data on File adequate to allow the remaking of Entries as they were transmitted to BND and all background data that was used in making the Entries for five (5) Business Days following the date of their transmittal to BND as provided herein, and shall provide such data to BND upon BND's request.

33. **Entire Agreement.** This Agreement (including the Schedules, all of which are incorporated herein by reference) is the complete and exclusive statement of the agreement between BND and Customer with respect to the subject matter hereof and supersedes any prior agreement(s) between BND and Customer with respect to such subject matter. In the event of any inconsistency between the terms of this Agreement, the Schedules, or any agreements governing the Account, 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 BND 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 BND shall incur no liability to Customer as a result of such violation or amendment. No course of dealing between BND and Customer will constitute a modification of this Agreement or constitute an agreement between BND and Customer regardless of whatever practices and procedures BND and Customer may use.

34. Cooperation in Loss Recovery Efforts. In the event of any damages for which BND or Customer may be liable to each other or to a third party pursuant to the services provided under this Agreement, BND and Customer 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. In the event of a breach of the Security Procedure, Customer agrees to assist BND in determining the manner and source of the breach. Such assistance shall include, but shall not be limited to, providing BND or BND's agent access to Customer's hard drives, storage media and devices, systems and any other equipment or device that was involved in the breach of the Security Procedure. Customer further agrees to provide to BND any analysis of such equipment, device, or software or any report of such analysis performed by Customer, Customer's agents, law enforcement agencies, or any other third party. Failure of Customer to assist BND as described in this paragraph shall be an admission by Customer that the breach of the Security Procedure was caused by a person who obtained information facilitating the breach of the Security Procedure from Customer and not from a source controlled by BND.

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligation hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

Name of Customer
By (Printed Name)
Signature
Title

The State of North Dakota doing business as The Bank of North Dakota

By (Printed Name)
Signature
Title

Schedule A
Delivery of Files

A. Delivery Location

- **Automated Electronic Delivery**
  Automated Electronic Delivery is eligible for State of North Dakota Agencies.

- **BND Direct**
  If transmission is via BND Direct, please refer to the ACH Pass Through Guide for the appropriate procedures.

- **Secure File Transfer Protocol (SFTP)**
  If transmission is via SFTP, the Electronic Banking Unit will provide the appropriate procedures.

B. Transmittals

Customer must deliver a transmittal to the BND ACH Desk upon completion of File Delivery via an e-mail to bndelectronic@nd.gov, fax to (701) 328-5632, or other method agreed to by Customer and BND from an authorized person listed in Schedule D. This Transmittal must contain Customer Name, Effective Date, Total Debits ($), and Total Credits ($) of the File. A callback will be done to verify the ACH File total unless Schedule E is signed.

C. Delivery Deadlines

Transmissions of a properly formatted File should be delivered to BND in accordance with the current cut-off time for inclusion in that days processing. BND may change the cut-off time in its sole discretion upon notice to Customer.

D. File Format, Content, Specifications

Entry Files should be in the format prescribed by the Rules of the National Automated Clearing House.

E. <u>Notice by BND</u>

If an Entry is rejected, returned, or if a notification of change is received, BND shall notify Customer by fax or other method agreed to by Customer and BND. If contact information needs to be updated Customer can contact BND at the contact information below.

All notices shall be provided to the following addresses for each party:

If to BND:

BND
Electronic Banking Unit
PO Box 5509
Bismarck, ND 58506-5509
Phone (701) 328-5749
Fax (701) 328-5632
Email bndelectronic@nd.gov

If to Customer:

Name		
Address		
City	State	ZIP Code
Telephone Number	Fax Number	
E-mail Address		

Schedule B
Security Procedures

A. The following sets forth the Security Procedures with which Customer agrees to comply when transmitting or delivering Entries to BND:

Customer utilizes an Electronic method via BND Direct to send ACH Files to BND:

1. Entries transmitted by Customer to BND shall be encrypted by at least 128 bit RC4 encryption or its equivalent.
2. Customer shall utilize a multi-factor authentication method as prescribed by BND.
3. Transmittal which includes Customer Name, Effective Date, Total Debits ($), and Total Credits ($) must be emailed or faxed from an authorized person listed in **Schedule D.**
4. Call back from BND to a second authorized person listed in **Schedule D** to verify the File total before the entries are processed.

Customer and BND use a Secure File Transfer Protocol (SFTP) to exchange ACH Files and information:

1. Transmittal which includes Customer Name, Effective Date, Total Debits ($), and Total Credits ($) must be emailed or faxed from an authorized person listed in **Schedule D.**
2. Call back from BND to a second authorized person listed in **Schedule D** to verify the File total before the entries are processed.

B. Customer agrees that the Security Procedure set forth above in Section A is commercially reasonable.

C. If Customer uses any method other than the Security Procedure set forth above in Section A to communicate, deliver, or transmit an Entry to BND, by doing so Customer rejects the Security Procedure set forth in Section A, chooses an alternative security procedure, agrees that such alternative security procedure may not be found to be commercially reasonable, and agrees to be bound by any Entry, whether or not authorized, that was issued in Customer's name and accepted by BND using the alternative security procedure selected by Customer.

Schedule C
ACH Limits

Limits:

The total dollar amount of Entries transmitted by Customer to BND per ACH File shall not exceed the dollar amount(s) listed below. If Customer sends multiple Files, each File name is listed with the File limit. Upon approval by BND customer may request revision of the established limit by sending written notice to BND.

File Name	File Limit	Point or CA Name *BND Use Only*

If Customer has an ACH File that will exceed the established File limit, an approval in writing or email from an authorized person listed on Schedule D is required before the ACH File will be processed.

Name of Customer	Date

Schedule D
ACH Certificate of Authorization

The undersigned authorized officer of Customer hereby certifies that the following-named officers, employees, or agents of Customer have been authorized by appropriate action of Customer to initiate ACH credit and debit entries or revisions on behalf of Customer to BND:

Name (Printed)	**Signature**	**Telephone Number**	**E-mail Address**

Customer agrees that the officers, employees, or agents named above shall have full and complete authority to initiate ACH credit and debit entries or revisions to BND pursuant to the Bank of North Dakota Agreement For Use of Automated Clearing House as revised from time to time and this Certificate unless and until Customer provides written notice to BND modifying or rescinding such authority, which notice shall be in the form of this Certificate.

This certificate supersedes any prior certificate of Customer delivered to BND.

Date Signed

Name of Customer
By (Printed Name)
Signature
Title

Schedule E
Waiver of Transmittal Callback

With this Waiver, Customer instructs BND to waive and discontinue the call back from BND to a second authorized person of Customer to verify the File total before the entries are processed and accepts full responsibility for the File delivered to BND.

Either party may terminate this Waiver at any time upon ten (10) days written notice to the other. The parties agree that all notices required under this Waiver shall be in writing, and may be given by facsimile transmission, email or by registered or certified mail, and shall become effective on the next business day following receipt of the notice by the recipient party.

Date Signed

Name of Customer
By (Printed Name)
Signature
Title

The State of North Dakota doing business as the Bank of North Dakota

By (Printed Name)
Signature
Title