THIRD PARTY SERVICE PROVIDER AGREEMENT

BANK OF NORTH DAKOTA
OPERATIONS
SFN 59705 (09-2016)

This agreement is made between the Bank of North Dakota (BND) and

Name of Customer	Date

Whereas, the customer whose name or trade name is printed in the box above (“Customer") desires to have BND retrieve their daily ACH files and provide them through the BND's Cash Management Software pursuant to the terms of this third party service provider agreement ("Agreement") and Operating Rules of the National Automated Clearing House Association ("Rules").

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **SERVICES.** BND agrees to provide the services authorized by the Agreement (“Services”) which includes retrieving Customer's daily ACH files from the ACH Operator and process Customer's ACH Returns and Notice of Changes. BND shall establish the time in which the Services shall be available to Customer (i.e., BND accepts transmissions and makes information available to Customer). BND reserves the right to add, delete, or modify such Services from time to time. Customer's continued use of the Services constitutes agreement to comply with any additions, deletions, or other modifications by BND of such Services.

2. **SECURITY PROCEDURES.** Customer agrees to the security procedures outlined in the Bank of North Dakota BND Direct Services/Cash Management Agreement and incorporated in the software. Customer will take reasonable measures to protect the confidentiality of the security procedures and will prevent access to them by unauthorized persons.

3. **LIABILITY OF BND; LIMITATION OF LIABILITY.** To the maximum extent permitted by applicable law and regardless of whether any remedy fails of its essential purpose, in no event shall BND or its agents, officers, directors, employees, successors, assigns, or affiliates be liable for any loss or damage other than damages directly caused by BND's gross negligence or intentional misconduct. BND will not be liable for any special, indirect, incidental, consequential, or punitive damages, including, but not limited to, any lost profits, lost time, lost savings, lost data, lost confidential or other information, or for business interruption, for any matter arising from or relating to this Agreement, the Services and/or the Cash Management Software, including without limitation, Customer's use, misuse, or inability to use the Cash Management Software, or any third party software available in conjunction with or through the Cash Management Software including any changes to or inaccessibility of the Cash Management Software, delay, failure, unauthorized access to, or alteration of any transmission or data sent or received or not sent or received. BND shall not be liable for any non-authorized access of the Cash Management Software or for the non-authorized access to documents or webpages of a network or website, including any trespass thereupon. BND shall also not be liable for the interruption or slowdown of the services of a network or website server that may be potentially caused by Customer or any third party user of the Cash Management Software. Without limiting the generality of the foregoing, BND shall be excused from failing to act or delay in acting if such delay is caused by legal constraint, interruption of transmission or communication facilities, equipment failure, or other circumstances beyond BND's control.

4. **INDEMNIFICATION.** Customer agrees to indemnify, hold harmless and defend BND, its agents, officers, directors, employees, successors, assigns, and affiliates, from and against any action, cause, claim, damage, debt, demand, losses, or liability, including reasonable costs and attorneys' fees, asserted by any person, arising out of or relating to the breach of this Agreement; Customer's misuse of the Cash Management Software; the unauthorized use of the Cash Management Software; and any acts or omissions of Customer, or any third party acting on Customer's behalf, in Customer's use of the Services.

5. **TERMINATION.** Either party may terminate this Agreement at any time upon thirty (30) days' written notice to the other. The parties agree that all notices required under this Agreement shall be in writing and may be given by facsimile transmission or by registered or certified mail and shall become effective on the next business day following receipt of the notice by the recipient party. BND may terminate this Agreement immediately without notice to the Customer if Customer fails to comply with any of the terms of this Agreement. In the event of termination, BND shall be entitled to payment for work or services performed to date of termination.

6. **NOTICE.** Other than immediate termination by BND all notices, demands, and requests required or permitted to be given under this Agreement must be in writing and sent to BND at:

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

   and to Customer at the most recent address for Customer on file with BND. Customer shall notify BND of any changes to its address for receipt of all notices, demands, and requests, and communications sent by BND to Customer at the most recent address for Customer on file with BND shall be effective regardless of whether Customer's actual address or addresses have changed. All notices, demands, and requests required or permitted to be given under this Agreement shall be effective upon receipt if delivered personally, or on the next business day if sent by overnight courier, by facsimile transmission, telecopy, or other form of electronic communication, or three (3) business days after deposit in the mail if mailed.

7. **CHOICE OF LAW.** Customer agrees that this Agreement for all purposes shall be governed by and construed in accordance with the laws of the State of North Dakota. Further, the Customer agrees to submit to the jurisdiction of the courts of North Dakota, and any action based on this Agreement and its attachments shall be brought in Burleigh County District Court, Bismarck, ND.

8. **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. For purposes of this section, publishing changes to the fee schedule located on the BND Direct Website constitutes notice to Customer of a change in fees.

9. **HEADINGS.** The headings that appear in this Agreement and in its Attachments have been inserted for the purpose of convenience and ready reference. They do not define, limit, or extend the scope or intent of any provisions thereof.

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)	Title		
Signature			
Address	City	State	ZIP Code

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

By (Printed Name)	Title
Signature	

Customer Primary ACH Contact Information

Name	Telephone Number
E-mail Address	