



ORION FINANCIAL ACH ORIGINATION AGREEMENT

This agreement is made between: Orion Federal Credit Union dba Orion Financial ("Financial Institution") and Member (the "Member") as of the last date of execution set forth below. Member wishes to initiate credit and/or debit Entries through the Financial Institution to accounts maintained at Financial Institution and in other depository financial institutions by means of the Automated Clearing House Network ("ACH") pursuant to the terms of this Agreement and the rules of the National Automated Clearing House Association ("NACHA") and Financial Institution's operating rules and procedures for electronic entries, including any exhibits or appendices thereto now in effect, or as may be amended from time to time, (the "Rules"), and Financial Institution is willing to act as an Originating Depository Financial Institution ("ODFI") with respect to such Entries. This Agreement sets forth the terms and conditions pursuant to which Financial Institution will provide to Member the ACH Services outlined herein ("Services"). Member hereby requests Financial Institution to provide the Service described in this Agreement. By executing this Agreement and/or using the Services described in this Agreement, Member accepts and agrees to all terms, conditions, and provisions of this Agreement and agrees that this Agreement sets forth the terms and conditions pursuant to which Financial Institution will provide to Member the Service outlined herein. To the extent that Member transmits Entries via the Internet, Member must execute the Internet Banking System agreement which is hereby incorporated by reference and made a part hereof. In the event of inconsistency between a provision of this Agreement, the Uniform Commercial Code ("UCC"), the Internet Banking System agreement, and/or the Depository Agreement, the provisions of this Agreement shall prevail. Terms not otherwise defined in this Agreement shall have the meaning ascribed to those terms in the Rules. The term "Entry" shall have the meaning provided in the Rules and shall also mean the data received from Member hereunder from which Financial Institution initiates each Entry. Therefore, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Financial Institution and Member, intending to be legally bound, do hereby agree as follows:

AGREEMENT

1. **COMPLIANCE WITH RULES AND LAWS.** Member acknowledges it has a copy or has access to a copy of the Rules. The Rules may also be purchased online at www.nacha.org under the publications tab. Member agrees to comply with and be subject to the Rules of NACHA in existence at the date of this Agreement, and any amendments to these Rules made from time to time. It shall be the responsibility of the Member that the origination of ACH transactions complies with U.S. law, including but is not limited to sanctions enforced by the Office of Foreign Assets Control ("OFAC"). It shall further be the responsibility of the Member to obtain



ORION FINANCIAL ACH ORIGINATION AGREEMENT

information regarding such OFAC enforced sanctions. (This information may be obtained directly from the OFAC Compliance Hotline at 800-540-OFAC or from the OFAC's home page site at www.ustreas.gov/ofac.) Member agrees that the performance of any action by Financial Institution to debit or credit an account or transfer funds otherwise required by the Rules is excused from the performance of such action to the extent that the action is inconsistent with United States law, including the obligations of the Financial Institution under OFAC or any program administered by the United States Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). Member agrees generally and warrants to Financial Institution that all actions by Member contemplated by this Agreement, including the preparation, transmittal, and settlement of Entries and payment orders, shall comply in all material respects with United States laws, regulations, regulatory guidelines and guidance, and official commentaries, including without limitation all such regulations, guidelines, and commentaries issued by the Board of Governors of the Federal Reserve and the Federal Financial Institutions Examination Council ("FFIEC"). Financial Institution will charge the Member with any fines or penalties imposed by OFAC, NACHA or any organization which are incurred as a result of non-compliance by the Member and the Member agrees to fully reimburse and/or indemnify Financial Institution for such charges or fines. The specific duties of the Member provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking. The duties of the Member set forth in the following paragraphs of this Agreement in no way limit the requirement of complying with the Rules.

2. **UNDERWRITING.** Member approval for use of this Service may be subject to underwriting criteria established by Financial Institution from time to time. If Financial Institution requires application of underwriting criteria to Member approval for use of this Service, Financial Institution will communicate to Member the nature and content of that criteria and the information Member will be required to provide to Financial Institution. Member agrees to provide Financial Institution such financial, business and operating information as Financial Institution may reasonably request in connection with Financial Institution's underwriting and approval process.

3. **SECURITY INTEREST.** To secure the payment and performance of Member's obligations set forth herein, Member grants to Financial Institution a security interest in and pledges and assigns to Financial Institution all of Member's right, title, and interest in the following described property, whether now owned or hereafter existing or acquired and wherever located: (a) all monies, instruments, savings, checking and other accounts of Member (excluding IRA, Keogh, trust accounts and other accounts subject to tax penalties if so assigned) that are now or in the future in Financial Institution's custody or control; (b) any other collateral



ORION FINANCIAL ACH ORIGINATION AGREEMENT

described in any security instrument securing the obligations of Member to Financial Institution under this Agreement or any other obligation of Member to Financial Institution; and (c) all proceeds and products of the property as well as any replacements, accessions, substitutions, and additions to any of the above.

4. **DESIGNATION OF ADMINISTRATOR.** In order to originate ACH Entries, Member must designate at least one Administrator. Administrator(s) shall be responsible for designating "Users" who Member authorizes to issue Entries on its behalf. For the purposes of this Agreement, the term User shall also include the Administrator. The Financial Institution shall be entitled to rely on the designations made by the Member's Administrator(s) and shall not be responsible for matching the names of the company Users designated by the Administrator(s) to names or titles listed in Member's banking resolutions. Member agrees that any such online Entries shall comply with Financial Institution's Security Procedures, which are subject to change without notice to Member. Although Financial Institution is only required to act upon the instructions of the User(s), the Financial Institution may, in its sole discretion, execute debit or credit Entries initiated by any individuals authorized by Member to sign checks on Member accounts. The signature cards establishing the authorized signatories for Member deposit accounts are hereby incorporated by reference and made a part hereof.

5. **TRANSMISSION OF ENTRIES BY MEMBER.** User(s) shall initiate the debit or credit Entries in Schedule A hereunder on behalf of and selected by Member. Financial Institution shall be entitled to deem any person having knowledge of any Security Procedure, defined below in Section 8 of this Agreement and required to initiate Entries under this Agreement, to be a User. User(s) shall transmit Entries to Financial Institution in computer readable form in compliance with the formatting and other requirements set forth in the NACHA file specifications or as otherwise specified by Financial Institution. Entries shall be transmitted to Financial Institution no later than the time and the number of days prior to the Effective Entry Date specified in the Processing Schedule attached hereto and made a part hereof as Schedule B. For the purposes of this Agreement, "Business Day" means Monday through Friday, excluding federal holidays and the "Settlement Date" with respect to any Entry shall be the Business Day when such Entry is debited or credited in accordance with the Rules. A federal holiday calendar is attached as Schedule G. Entries received after the cut off time shall be deemed to have been received on the next Business Day. The total dollar amount of Entries transmitted by Member to Financial Institution on any one Business Day shall not exceed the lesser of the amount of collected funds in Member's account or the ACH Processing Limit set forth in Schedule D to this Agreement. Member may not reinitiate entries except as prescribed by the Rules.



ORION FINANCIAL ACH ORIGINATION AGREEMENT

"Entry Settlement Limit" means the maximum aggregate amount of In-Process Entries permitted to be outstanding at any time, which amount shall be separately communicated to Member by Financial Institution in writing from time to time.

"In-Process Entries" means the aggregate dollar amount of all credit or debit Entries initiated by Member and in process on any date for which settlement has not occurred with respect to credit Entries, or the applicable period for the return of items has not expired with respect to debit Entries.

"Overlimit Entry" means an Entry the amount of which would cause the aggregate amount of In-Process Entries to exceed the Entry Settlement Limit. Member agrees that Financial Institution will not process an Overlimit Entry. Financial Institution will suspend any Overlimit Entry submitted by Member and may, following its receipt of an Overlimit Entry; suspend all In-Process Entries. Member acknowledges that any Overlimit Entry or other In-Process Entries suspended by Financial Institution will not settle on their scheduled Settlement Date. If Member wishes to initiate an Entry that would cause the amount of In-Process Entries to exceed the Entry Settlement Limit, Member may submit to Financial Institution its request to initiate an Entry that otherwise would be an Overlimit Entry. Member must submit its request at least 2 banking days prior to the date on which Member wishes to initiate the Entry that otherwise would be an Overlimit Entry. Financial Institution may require from Member financial information or other information in connection with Financial Institution's consideration of the request. Financial Institution may grant or deny Member's request at its sole discretion. In addition to the foregoing, Financial Institution generally reserves the right to limit the nature and amount of the preauthorized debit/credit Entries processed under this Agreement or to refuse to process any debit/credit Entries under this Agreement if, in Financial Institution's sole judgment (i) there is reasonable cause to believe that any Entry will be returned or will not settle in the ordinary course of the transaction for any reason, (ii) to do otherwise would violate any limit set by the applicable clearing house association or any governmental authority or agency to control payment system risk, or (iii) a preauthorized credit Entry or the return of a preauthorized debit Entry would create an overdraft of Member's Accounts. If any of the foregoing actions are taken by Financial Institution with respect to a particular preauthorized debit/credit Entry, Financial Institution will notify Member as promptly as practicable, but in no event later than 2 banking days after its decision. Member may not reinitiate entries except as prescribed by the Rules.

6. THIRD-PARTY SERVICE PROVIDERS. Member may be using special equipment, services or software provided by a third party to assist it in processing Files hereunder ("Service Provider").



ORION FINANCIAL ACH ORIGINATION AGREEMENT

Member agrees not to use a Service Provider to transmit files to Financial Institution without first entering into Financial Institution's Third-Party Service Provider Agreement. If Member uses Service Provider to transmit Files to Financial Institution and Member and Service Provider have not entered into a Third-Party Service Provider Agreement, Member (a) agrees that Service Provider is acting as Member's agent in the delivery of Files to Financial Institution, and (b) agrees to assume full responsibility and liability for any failure of Service Provider to comply with the laws of the United States, the Rules and this Agreement. Financial Institution will not be liable for any losses or additional costs incurred by Member as a result of any error by Service Provider or a malfunction of equipment provided by Service Provider. Member is solely responsible for maintaining compliance with the requirements of Service Provider, including obtaining any software updates. Financial Institution's sole responsibility shall be to transmit Financial Institution approved transactions to the ACH Operator and Financial Institution shall not have any responsibility for any File handled by Service Provider until that point in time when Financial Institution accepts and approves a File from such Service Provider for processing. If Financial Institution authorizes Member to use a Service Provider, the terms and conditions governing the relationship between Member and the Service Provider shall be governed by a separate agreement between Member and Service Provider ("Service Provider Agreement"). All of Member's obligations and responsibilities under this Agreement will apply to the Service Provider, and Member's separate agreement with the Service Provider must so provide. At Financial Institution's request, Member will provide to Financial Institution a true and exact copy of such agreement. Member 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 Financial Institution. Notwithstanding the foregoing, Member hereby authorizes Financial Institution to accept any File submitted by the Service Provider even if the Service Provider has not been designated as a User or if the Third-Party Service Provider has not executed the Service Provider agreement. Member hereby indemnifies and holds Financial Institution harmless for any losses, damages, fines, assessments, costs and expenses incurred or suffered by Financial Institution or any other person as a result of or arising from Member's use of Service Provider, including fines or assessments incurred under or pursuant to the Rules and attorneys' fees.

7. SECURITY PROCEDURES.

(a) The Member shall comply with the "Security Procedures" described in Schedule C attached hereto and made a part hereof, and Member acknowledges and agrees that the Security Procedures, including (without limitation) any code, password, personal identification number, user identification technology, token, certificate, or other element, means, or method of



ORION FINANCIAL ACH ORIGINATION AGREEMENT

authentication or identification used in connection with a Security Procedure ("Security Devices") used in connection therewith, constitute commercially reasonable security procedures under applicable law for the initiation of ACH entries. Member authorizes Financial Institution to follow any and all instructions entered and transactions initiated using applicable Security Procedures unless and until Member has notified Financial Institution, according to notification procedures prescribed by Financial Institution, that the Security Procedures or any Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) and until Financial Institution has had a reasonable opportunity to act upon such notice. Member agrees that the initiation of a transaction using applicable Security Procedures constitutes sufficient authorization for Financial Institution to execute such transaction notwithstanding any particular signature requirements identified on any signature card or other documents relating to Member's deposit account maintained with Financial Institution, and Member agrees and intends that the submission of transaction orders and instructions using the Security Procedures shall be considered the same as Member's written signature in authorizing Financial Institution to execute such transaction. Member acknowledges and agrees that Member 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. Member further acknowledges and agrees that the Security Procedures are not designed to detect error in the transmission or content of communications or Entries initiated by Member and that Member bears the sole responsibility for detecting and preventing such error.

(b) Member agrees to keep all Security Procedures and Security Devices protected, secure, and strictly confidential and to provide or make available the same only to User(s). Member agrees to instruct each User not to disclose or provide any Security Procedures or Security Devices to any unauthorized person. Financial Institution shall distribute Security Devices to the Administrator and Financial Institution shall otherwise communicate with the Administrator regarding Security Procedures. Member's Administrator shall have responsibility to distribute Security Devices to User(s) and to ensure the proper implementation and use of the Security Procedures by User(s). Where Member has the ability to change or modify a Security Device from time to time (e.g., a password or PIN), Member agrees to change Security Devices frequently in order to ensure the security of the Security Device. Member agrees to notify Financial Institution immediately, according to notification procedures prescribed by Financial Institution, if Member believes that any Security Procedures or Security Device has been stolen, compromised, or otherwise become known to persons other than User(s) or if Member believes that any ACH transaction or activity is unauthorized or in error. In the event of any actual or



ORION FINANCIAL ACH ORIGINATION AGREEMENT

threatened breach of security, Financial Institution may issue Member a new Security Device or establish new Security Procedures as soon as reasonably practicable, but Financial Institution shall not be liable to Member or any third party for any delay in taking such actions.

(c) Member agrees to notify Financial Institution immediately, according to notification procedures prescribed by Financial Institution, if the authority of any Administrator(s) shall change or be revoked. Member shall recover and return to Financial Institution any Security Devices in the possession of any User(s) whose authority to have the Security Device has been revoked.

(d) Financial Institution 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 Financial Institution's discretion. Financial Institution will endeavor to give Member reasonable notice of any change in Security Procedures; provided that Financial Institution may make any change in Security Procedures without advance notice to Member if Financial Institution, in its judgment and discretion, believes such change to be necessary or desirable to protect the security of Financial Institution's systems and assets. Member's implementation and use of any changed Security Procedures after any change in Security Procedures shall constitute Member's agreement to the change and Member's agreement that the applicable Security Procedures, as changed, are commercially reasonable and adequate for the purposes intended.

8. PHYSICAL AND ELECTRONIC SECURITY.

(a) Member is solely responsible for providing for and maintaining the physical, electronic, procedural, administrative, and technical security of data and systems in Member's possession or under Member's control. Without limiting the generality of the foregoing, Member specifically acknowledges and agrees that as part of the foregoing obligation Member shall comply with the provisions of Section 1.6 of the Rules, entitled "Security Requirements," for the safeguarding of Protected Information, as that term is defined in the Rules. Financial Institution is not responsible for any computer viruses (including, without limitation, programs commonly referred to as "malware," "keystroke loggers," and/or "spyware"), problems or malfunctions resulting from any computer viruses, or any related problems that may be associated with the use of an online system or any ACH Origination services. Any material downloaded or otherwise obtained is obtained at Member's own discretion and risk, and Financial Institution is not responsible for any damage to Member'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. Member is solely responsible for maintaining and applying anti-virus software, security patches, firewalls, and other security measures with respect to Member's operating



ORION FINANCIAL ACH ORIGINATION AGREEMENT

systems, and for protecting, securing, and backing up any data and information stored in or on Member's operating systems. Financial Institution is not responsible for any errors or failures resulting from defects in or malfunctions of any software installed on Member's operating systems or accessed through an Internet connection.

(b) Member acknowledges and agrees that it is Member'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"). Member agrees to educate User(s), agents, and employees as to the risks of such fraud and to train such persons to avoid such risks. Member acknowledges that Financial Institution will never contact Member by e-mail in order to ask for or to verify Account numbers, Security Devices, or any sensitive or confidential information. In the event Member receives an e-mail or other electronic communication that Member believes, or has reason to believe, is fraudulent, Member agrees that neither Member nor its User(s), agents, and employees shall respond to the 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. Member agrees that Financial Institution is not responsible for any losses, injuries, or harm incurred by Member as a result of any electronic, e-mail, or Internet fraud.

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

9. **INTERNATIONAL ACH TRANSACTIONS ("IAT").** Member shall not initiate any IAT Entries without Financial Institution's prior approval. If approved by Financial Institution, the following provisions apply to IAT Entries originated by Member:



ORION FINANCIAL ACH ORIGINATION AGREEMENT

- (a) IAT Entries are transmitted by Financial Institution in U.S. dollars and converted to the local currency for receipt in the foreign country at the exchange rate determined by Financial Institution's processor on the date determined by Financial Institution's processor. All risk of fluctuation in the applicable exchange rate is borne by Member and Member agrees and acknowledges that Financial Institution shall not be liable to Member for any loss or charge incurred by Member as the result of the application of any foreign currency exchange criteria imposed by any institution or agency located outside the United States.
- (b) In the event of a returned IAT Entry, consumer payments will be credited to Member at the originated U.S. dollar amount; corporate payments will be credited to Member at the exchange rate determined by Financial Institution's processor at the time of return.
- (c) In the event of an error in an Entry or duplicate entries, Member acknowledges and agrees that Member shall be liable for any and all losses caused by and a direct or indirect result from the error or duplicate Entry.
- (d) Member shall originate all International ACH Transactions, as that term is defined in the Rules, with an IAT SEC code and Member hereby agrees to abide by all of the Rules related to IAT Entries.
- (e) Member agrees that in the case of a non-Consumer Account, Member shall enter into an agreement with the Receiver whereby the Receiver agrees to abide by the Rules in effect from time to time.
- (f) Member acknowledges that it has reviewed and understands the section of the Rules entitled (or otherwise dealing with) "Rules Exceptions for Outbound IAT Entries" and Member understands and agrees that laws, regulations, and rules of the country in which the Receiver is located shall govern the matters listed within that subsection. Member further acknowledges that Member understands how such laws, regulations and rules differ from the Rules.
- (g) Member hereby indemnifies Financial Institution from and against any and all resulting claims, demands, losses, liabilities, or expenses, including attorneys' fees and costs, resulting directly or indirectly from Member's origination of an IAT Entry.
- (h) Member agrees and acknowledges that any assistance by Financial Institution does not in any manner obligate Financial Institution for the accuracy or enforceability of the Entry in any country outside the United States.
- (i) Member bears the risk of any loss caused by any delay, tax, cost, tariff, fee, or other charge incurred on account of the Entry in any country outside the United States.



ORION FINANCIAL ACH ORIGINATION AGREEMENT

(j) If the settlement of any IAT Entry involves clearing of the Entry in more than one country outside the United States, Financial Institution shall be permitted to rely upon any advice or instruction received by Financial Institution from the financial institution or financial agency located in the first country outside the United States to which the Entry is directed.

(k) IAT Entries must be authorized as provided in the Rules. The form and content of the authorization, including whether such authorization may be oral, electronic, or written, shall be governed by the laws and payment system rules of the receiving country.

10. **CREDIT AND DEBIT ENTRIES; RECORDS RETENTION.** Member 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 Member and Member shall retain the Authorization Agreement in original form while it is in effect and the original or a copy of each authorization for three (3) years after termination or revocation of such authorization as stated in the Rules. Upon request, Member shall furnish the original or a copy of the authorization to any affected Participating Depository Financial Institution, as defined in the Rules. Financial institution agrees to provide the identity of affected Participating Depository Financial Institutions to Member upon written request by Member. Member shall be solely responsible for communicating with the Participating Depository Financial Institution to establish the method by which the Authorization Agreement will be provided, and Member agrees to provide the Authorization Agreement to the identified Participating Depository Financial Institution within the time frame identified in the Rules. Member shall ensure that all authorization requirements of the Rules for each SEC Code are satisfied and in compliance with the Rules.

11. **RECORDING AND USE OF COMMUNICATIONS.** Member and Financial Institution 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. Financial Institution shall not be obligated to make such recordings.

12. **PROCESSING, TRANSMITTAL, AND SETTLEMENT BY FINANCIAL INSTITUTION.** Except as otherwise

provided for in this Agreement and if Financial Institution elects to accept Entries, Financial Institution shall:

(a) (i) use commercially reasonable efforts to comply with the instructions of Member, (ii) process Entries received from Member to conform with the file specifications set forth in the



ORION FINANCIAL ACH ORIGINATION AGREEMENT

Rules, (iii) transmit such Entries as an ODFI to the "ACH" processor selected by Financial Institution, (iv) settle for such Entries as provided in the Rules, and (v) in the case of a credit Entry received for credit to an account with Financial Institution ("On-Us Entry"), Financial Institution shall credit the Receiver's account in the amount of such credit Entry on the Effective Entry Date contained in such credit Entry provided such credit Entry is received by Financial Institution at the time and in the form prescribed by Financial Institution in Section 5.

(b) transmit such Entries to the ACH processor by the deposit deadline of the ACH processor, provided: (i) such Entries are completely received by Financial Institution's cut-off time at the location specified by Financial Institution to Member from time to time; (ii) the Effective Entry Date satisfies the criteria provided by Financial Institution to Member; and (iii) the ACH processor is open for business on such Business Day. Member agrees that the ACH processor selected by Financial Institution shall be considered to have been selected by and designated by Member. The Member will receive immediately available funds for any electronic debit entry initiated by it on the Settlement Date applicable thereto in accordance with the Rules.

13. **PAYMENT FOR CREDIT ENTRIES AND RETURNED DEBIT ENTRIES.** Member agrees to pay for all credit Entries issued by Member, User(s), or credit Entries otherwise made effective against Member. Member shall make payment to Financial Institution on the date as determined by Financial Institution in its sole discretion ("Payment Date"). Member shall pay Bank for the amount of each debit Entry returned by a Receiving Depository Financial Institution ("RDFI") or debit Entry dishonored by Financial Institution. Payment shall be made by Member to Financial Institution in any manner specified by Financial Institution. Notwithstanding the foregoing, Financial Institution is hereby authorized to charge the account(s) ("Authorized Account(s)") designated in Schedule E, as payment for all payments due Financial Institution under this Agreement. Member shall maintain sufficient collected funds in the Authorized Account(s) to pay for all payments due Financial Institution under this Agreement on the Payment Date. In the event the Authorized Account or any other Member bank account does not have collected funds sufficient on the Payment Date to cover the total amount of all Entries to be paid on such Payment Date, Financial Institution may take any of the following actions:

(a) Refuse to process all Entries, in which event Financial Institution shall return the data relating to such credit Entries to Member, whereupon Financial Institution shall have no liability to Member or to any third party as a result thereof; or

(b) Process that portion of the credit Entries as Member has sufficient available funds in the Authorized Account to cover, in whatever order Financial Institution in its sole discretion shall



ORION FINANCIAL ACH ORIGINATION AGREEMENT

elect to process, in which event Financial Institution shall return the data relating to such credit Entries as are not processed to Member, whereupon Financial Institution shall have no liability to Member or any third party as a result thereof; or

(c) Process all credit Entries. In the event Financial Institution elects to process credit Entries initiated by Member and Member has not maintained sufficient available funds in the Authorized Account with Financial Institution to cover them, the total amount of the insufficiency advanced by Financial Institution on behalf of Member shall be immediately due and payable by Member to Financial Institution without any further demand from Financial Institution. If Financial Institution elects to pay Member's account in the overdraft on any one or more occasions, it shall not be considered a waiver of Financial Institution's rights to refuse to do so at any other time nor shall it be an agreement by Financial Institution to pay other items in the overdraft.

14. **PRE-FUNDING.** Financial Institution reserves the right to require Member to pre-fund an Account maintained at Financial Institution prior to the Settlement Date of the ACH file. Financial Institution shall determine whether pre-funding is required based on criteria established from time to time by Financial Institution. Financial Institution will communicate directly to Member if pre-funding is required and, if requested by Member, will provide Member with an explanation of its pre-funding criteria. If it is determined that pre-funding is required, Member will provide immediately available and collected funds sufficient to pay all Entries initiated by Member (a) not later than 4:00 PM CT 2 banking days before each Settlement Date, and (b) prior to initiating any Entries for which pre-funding is required.

15. **ON-US ENTRIES.** Except as provided in Section 17, Rejection of Entries, or in the case of an Entry received for credit to an account maintained with Financial Institution (an "On-Us Entry"), the Financial Institution shall credit 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 Section 12 (b) (i), (ii), and (iii) are met. If any of those requirements are not met, the Financial Institution shall make reasonable efforts to credit the Receiver's account in the amount of such Entry no later than the next Business Day following such Effective Entry Date.

16. **RESERVES.** From time to time, Financial Institution shall evaluate Member's transaction activity for the purpose of establishing averages for transaction frequency, amount, returns and adjustments. These evaluations will occur at least annually and may occur more frequently at Financial Institution's discretion. In connection with these evaluations, Financial Institution reserves the right to require Member to establish reserves with Financial Institution calculated by Financial Institution to cover Member's obligations to Financial Institution arising from ACH



ORION FINANCIAL ACH ORIGINATION AGREEMENT

activities under this Agreement. Reserves may be expressed as a fixed dollar amount or as a "rolling reserve" calculated based on "rolling" averages determined by Financial Institution's periodic evaluations. The amount of reserves required by Financial Institution, if any, will be communicated directly to Member from time to time. Member agrees to establish reserves as required by Financial Institution within 1 banking days after receipt of a communication from Financial Institution setting forth the amount of required reserves and the basis of calculation used to determine the amount of reserves. Financial Institution may suspend ACH processing activity for Member if Member fails to establish the required amount of reserves within the time period specified by Financial Institution in its communication to Member.

17. **REJECTION OF ENTRIES.** Member agrees that Financial Institution has no obligation to accept Entries and therefore may reject any Entry issued by Member. Financial Institution has no obligation to notify Member of the rejection of an Entry but Financial Institution may do so at its option. Financial Institution shall have no liability to Member for rejection of an Entry and shall not be liable to pay interest to Member even if the amount of Member's payment order is fully covered by a withdrawable credit balance in an Authorized Account of Member or the Financial Institution has otherwise received full payment from Member.

18. **CANCELLATION OR AMENDMENT BY MEMBER.** Member shall have no right to cancel or amend any Entry after its receipt by Financial Institution. However, Financial Institution may, at its option, accept a cancellation or amendment by Member. If Financial Institution accepts a cancellation or amendment of an Entry, Member must comply with the Security Procedures provided in Section C of this Agreement. If such a request is received by the Financial Institution before the affected Entry has been transmitted to the ACH (or, in the case of an On-Us Entry, before the Receiver's account has been credited or debited), the Financial Institution will use reasonable efforts to cancel or amend the Entry as requested, but the Financial Institution shall have no liability if the cancellation or amendment is not effected. If Financial Institution accepts a cancellation or amendment of an Entry, Member hereby agrees to indemnify, defend all claims and hold Financial Institution harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Financial Institution as the result of its acceptance of the cancellation or amendment.

19. **REVERSALS OF ENTRIES.**

(a) **General Procedure.** Upon proper and timely request by the Member, the Financial Institution will use reasonable efforts to effect a reversal of an Entry or File to the extent reversal is expressly permitted by the Rules. To be "proper and timely," the request must (i) be made within five (5) Business Days of the Effective Entry Date for the Entry or File to be



ORION FINANCIAL ACH ORIGINATION AGREEMENT

reversed; (ii) be made immediately, not to exceed 24 hours, upon discovery of the error; (iii) be accompanied by a Reversal/Cancellation Request form, and (iv) the basis for such reversal must be expressly permitted by the Rules and otherwise in compliance with the Rules. In addition, if the Member requests reversal of a Debit Entry or Debit File, it shall concurrently deposit into the Member Account an amount equal to that Entry or File. The Member shall notify the Receiver of any reversing Entry initiated to correct any Entry it has initiated in error. The notification to the Receiver must include the reason for the reversal and be made no later than the Settlement Date of the reversing Entry.

(b) **No Liability: Reimbursement to the Financial Institution.** Under no circumstances shall the Financial Institution be liable for interest or related losses if the requested reversal of an Entry is not effected. The Member shall reimburse the Financial Institution for any expenses, losses or damages it incurs in effecting or attempting to effect the Member's request for reversal of an Entry.

20. **ERROR DETECTION.** Financial Institution has no obligation to discover and shall not be liable to Member for errors made by Member, including but not limited to errors made in identifying the Receiver, or an Intermediary or RDFI or for errors in the amount of an Entry or for errors in Settlement Dates. Financial Institution shall likewise have no duty to discover and shall not be liable for duplicate Entries issued by Member. Notwithstanding the foregoing, if the Member discovers that any Entry it has initiated was in error, it shall notify the Financial Institution of such error. If such notice is received no later than 2 hour prior to the ACH processing deadline, the Financial Institution will utilize reasonable efforts to initiate an adjusting Entry or stop payment of any On-Us" credit Entry within the time limits provided by the Rules. In the event that Member makes an error or issues a duplicate Entry, Member shall indemnify, defend all claims, and hold Financial Institution harmless from any loss, damages, or expenses, including but not limited to attorney's fees, incurred by Financial Institution as result of the error or issuance of duplicate Entries.

21. **PROHIBITED TRANSACTIONS.** Member agrees not to use or attempt to use the Services (a) to engage in any illegal purpose or activity or to violate any applicable law, rule or regulation, (b) to breach any contract or agreement by which Member 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. Member acknowledges and agrees that Financial Institution has no obligation to monitor Member's use of the Services for transactions and activity that is impermissible or prohibited under the terms of this Agreement; provided, however, that



ORION FINANCIAL ACH ORIGINATION AGREEMENT

Financial Institution reserves the right to decline to execute any transaction or activity that Financial Institution believes violates the terms of this Agreement.

22. **PRENOTIFICATION.** Member, at its option, may send prenotification that it intends to initiate an Entry or Entries to a particular account within the time limits prescribed for such notice in the Rules. Such notice shall be provided to the Financial Institution in the format and on the medium provided in the media format section of such Rules. If Member receives notice that such prenotification has been rejected by an RDFI within the prescribed period, or that an RDFI will not receive Entries without having first received a copy of the Authorization signed by its Member, Member will not initiate any corresponding Entries to such accounts until the cause for rejection has been corrected or until providing the RDFI with such authorization within the time limits provided by the Rules.

23. **NOTICE OF RETURNED ENTRIES AND NOTIFICATIONS OF CHANGE.** Financial Institution shall notify Member by e-mail, facsimile transmission, US mail, or other means of the receipt of a returned Entry from the ACH Operator. Except for an Entry retransmitted by Member in accordance with the requirements of Section 5, Financial Institution shall have no obligation to retransmit a returned Entry to the ACH Operator if Financial Institution complied with the terms of this Agreement with respect to the original Entry. Member shall notify the Receiver by phone or electronic transmission of receipt of each return Entry no later than one Business Day after the Business Day of receiving such notification from Financial Institution. Financial Institution shall provide Member all information, as required by the Rules, with respect to each Notification of Change ("NOC") Entry or Corrected Notification of Change ("Corrected NOC") Entry received by Financial Institution relating to Entries transmitted by Member. Financial Institution must provide such information to Member within two (2) banking days of the Settlement Date of each NOC or Corrected NOC Entry. Member shall ensure that changes requested by the NOC or Corrected NOC are made within six (6) banking days of Member's receipt of the NOC information from Financial Institution or prior to initiating another Entry to the Receiver's account, whichever is later.

24. **ACCOUNT RECONCILIATION.** The Member agrees to notify the Financial Institution promptly of any discrepancy between the Member's records and the information shown on any periodic statement. If the Member fails to notify the Financial Institution within ten (10) calendar days of receipt of a periodic statement containing such information; the Member agrees that the Financial Institution shall not be liable for any other losses resulting from the Member's failure to give such notice or any loss of interest or any interest equivalent with respect to any Entry shown on such periodic statement. If the Member fails to notify the



ORION FINANCIAL ACH ORIGINATION AGREEMENT

Financial Institution within thirty (30) calendar days of receipt of such periodic statement, the Member shall be precluded from asserting any discrepancy against the Financial Institution.

25. **PROVISIONAL SETTLEMENT.** Member shall be bound by and comply with the Rules as in effect from time to time, including without limitation the provision thereof making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry; and Member acknowledges that it has received notice of that Rule and or 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 Member shall not be deemed to have paid the Receiver the amount of the Entry.

26. **MEMBER REPRESENTATIONS AND WARRANTIES; INDEMNITY.** With respect to each and every Entry transmitted by Member, Member represents and warrants to Financial Institution and agrees that (a) each person or entity shown as the Receiver on an Entry received by Financial Institution from Member 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, (b) such authorization is operative at the time of transmittal or crediting or debiting by Financial Institution as provided herein, (c) Entries transmitted to Financial Institution by Member are limited to those types of credit and debit Entries set forth in Schedule A, (d) Member shall 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 OFAC; laws, regulations, and orders administered FinCEN; and any state laws, regulations, or orders applicable to the providers of ACH payment services, (e) Member shall be bound by and comply with the provision of the Rules (among other provisions of the Rules) making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry, and (f) Member shall ensure that any and all non-public personal information provided by Member to Financial Institution shall be secure and will not be disclosed to any unauthorized person. Member 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 Member shall not be deemed to have paid the Receiver the amount of the Entry. The Member shall defend, indemnify, and hold harmless the Financial Institution, and its officers, directors, agents, and employees, from and against any and all actions, costs, claims, losses, damages, or expenses, including attorney's fees and expenses, resulting from or arising out of (aa) any breach of any of the agreements, representations or warranties of the Member contained in this Agreement; or (bb) any act or omission of the Member or any other person acting on the Member's behalf.



ORION FINANCIAL ACH ORIGINATION AGREEMENT

27. ADDITIONAL MEMBER WARRANTIES FOR SELECTED STANDARD ENTRY CLASSES. NACHA, in its role of ensuring the safety, security, and viability of the ACH network, has determined that certain single-use or limited-use consumer authorizations have the potential to increase risk in the ACH system and compromise system effectiveness by increasing the incidence of returned Entries. Therefore, to qualify as an Originator of such Entries, Member hereby warrants to Financial Institution that for each such ACH Entry submitted for processing, Member has obtained all authorizations from the Receiver as required by the Rules, by Regulation E or other applicable law, and this Agreement. Member also makes the additional warranties to Bank that Bank makes to each RDFI and ACH Operator under the Rules for the respective SEC codes for Entries originated by Member. Member hereby indemnifies and holds Financial Institution harmless from any liability arising out of Member's breach of these warranties.

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



ORION FINANCIAL ACH ORIGINATION AGREEMENT

29. LIMITATION OF LIABILITY.

(a) IN THE PERFORMANCE OF THE SERVICES REQUIRED BY THIS AGREEMENT, FINANCIAL INSTITUTION SHALL BE ENTITLED TO RELY SOLELY ON THE INFORMATION, REPRESENTATIONS, AND WARRANTIES PROVIDED BY MEMBER PURSUANT TO THIS AGREEMENT, AND SHALL NOT BE RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS THEREOF. FINANCIAL INSTITUTION 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. FINANCIAL INSTITUTION SHALL NOT BE RESPONSIBLE FOR MEMBER'S ACTS OR OMISSIONS (INCLUDING, WITHOUT LIMITATION, THE AMOUNT, ACCURACY, TIMELINESS OF TRANSMITTAL OR AUTHORIZATION OF ANY ENTRY RECEIVED FROM MEMBER) 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 ANY ENTRY BY SUCH RECEIVER OR RDFI), AND NO SUCH PERSON SHALL BE DEEMED FINANCIAL INSTITUTION'S AGENT. MEMBER AGREES TO INDEMNIFY FINANCIAL INSTITUTION AGAINST ANY LOSS, LIABILITY OR EXPENSE (INCLUDING ATTORNEYS' FEES AND COSTS) RESULTING FROM OR ARISING OUT OF ANY CLAIM OF ANY PERSON THAT THE FINANCIAL INSTITUTION IS RESPONSIBLE FOR ANY ACT OR OMISSION OF MEMBER OR ANY OTHER PERSON DESCRIBED IN THIS SECTION 29(a).

(b) FINANCIAL INSTITUTION SHALL BE LIABLE FOR MEMBER'S ACTUAL DAMAGES DUE TO CLAIMS ARISING SOLELY FROM FINANCIAL INSTITUTION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; IN NO EVENT SHALL FINANCIAL INSTITUTION BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH MEMBER MAY INCUR OR SUFFER IN CONNECTION WITH THIS AGREEMENT, WHETHER OR NOT THE LIKELIHOOD OF SUCH DAMAGES WAS KNOWN OR CONTEMPLATED BY THE FINANCIAL INSTITUTION AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY OF LIABILITY WHICH MEMBER MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM FINANCIAL INSTITUTION'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING PROVISIONS, FINANCIAL INSTITUTION 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 FINANCIAL INSTITUTION'S CONTROL. IN ADDITION, FINANCIAL



ORION FINANCIAL ACH ORIGINATION AGREEMENT

INSTITUTION SHALL BE EXCUSED FROM FAILING TO TRANSMIT OR DELAY IN TRANSMITTING AN ENTRY IF SUCH TRANSMITTAL WOULD RESULT IN FINANCIAL INSTITUTION'S HAVING EXCEEDED ANY LIMITATION UPON ITS INTRA- DAY NET FUNDS POSITION ESTABLISHED PURSUANT TO PRESENT OR FUTURE FEDERAL RESERVE GUIDELINES OR IN FINANCIAL INSTITUTION'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) SUBJECT TO THE FOREGOING LIMITATIONS, FINANCIAL INSTITUTION'S LIABILITY 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 FOR THE PERIOD INVOLVED. AT FINANCIAL INSTITUTION'S OPTION, PAYMENT OF SUCH INTEREST MAY BE MADE BY CREDITING THE ACCOUNT.

30. **INCONSISTENCY OF NAME AND ACCOUNT NUMBER.** The Member acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by the Financial Institution to the RDFI may be made by the RDFI (or by the Financial Institution in the case of an On-Us Entry) on the basis of the account number supplied by the Member, even if it identifies a person different from the named Receiver, and that the Member's obligation to pay the amount of the Entry to the Financial Institution is not excused in such circumstances. Member is liable for and must settle with Financial Institution for any Entry initiated by Member that identifies the Receiver by account or identifying number or by name and account or identifying number.

31. **PAYMENT FOR SERVICES.** The Member shall pay the Financial Institution the charges for the services provided in connection with this Agreement, as set forth in Schedule F. All fees and services are subject to change upon thirty (30) days prior written notice from the Financial Institution. Such charges do not include, and the Member 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 Depository Agreement between the Financial Institution and the Member with respect to the Account.

32. **AMENDMENTS.** Except as provided in Section 31, the Financial Institution may amend this agreement from time to time upon written notice to the Member. In the event that performance of services under this Agreement would result in a violation of any present or future statute, regulation or governmental policy to which the Financial Institution is subject,



ORION FINANCIAL ACH ORIGINATION AGREEMENT

then this Agreement shall be amended to the extent necessary to comply with such statute, regulation or policy. Alternatively, the Financial Institution may terminate this Agreement if it deems such action necessary or appropriate under the circumstances. The Financial Institution shall have no liability to the Member as a result of any such violation, amendment or termination. Any practices or course of dealings between the Financial Institution and the Member, or any procedures or operational alterations used by them, shall not constitute a modification of this Agreement or the Rules, nor shall they be construed as an amendment to this Agreement or the Rules.

33. NOTICES, INSTRUCTIONS, ETC.

(a) Except as stated herein, the Financial Institution shall not be required to act upon any notice or instruction received from the Member or any other person, or to provide any notice or advice to the Member or any other person with respect to any matter.

(b) The Financial Institution shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an authorized representative of Member, and any such communication shall be deemed to have been signed by such person. Such notice shall be effective on the second Business Day following the day received by the Financial Institution.

(c) Except as stated herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered or sent by US mail, if to Member, at the address of Member on the books of Financial Institution and if to Financial Institution, at the following address:

Orion Financial Attn: Account Services
400 Monroe Avenue
Memphis, TN 38103

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

34. DATA RETENTION AND PROTECTION. The Member shall retain data on file adequate to permit the remaking of Entries for five (5) Business Days following the date of their transmittal by the Financial Institution as provided herein, and shall provide such Data to the Financial Institution upon its request. Member acknowledges and agrees to comply with any and all Data Security Requirements contained in the Rules, including without limitation any requirements of ACH Originators, Third-Party Service Providers and Third-Party Senders to protect account



ORION FINANCIAL ACH ORIGINATION AGREEMENT

numbers used in the initiation of ACH Entries and Files by rendering them unreadable when stored electronically. To the extent you come into possession, custody or control of any Personally Identifiable Information or other non-public information, including information (1) provided by a consumer to you, (2) resulting from any transaction with the consumer or any service performed for the consumer, or (3) otherwise obtained by you with regard to a consumer, including account information (collectively "PII"), you represent and warrant to Financial Institution and its Vendors that you will protect such PII by rendering it unreadable and inaccessible by persons who do not have legal authority to access such PII.

35. **DATA MEDIA AND RECORDS.** All data media, Entries, security procedures and related records used by the Financial Institution for transactions contemplated by this Agreement shall be and remain the Financial Institution's property. The Financial Institution may, at its sole discretion, make available such information upon the Member's request. Any expenses incurred by the Financial Institution in making such information available to the Member shall be paid by the Member.

36. **COOPERATION IN LOSS RECOVERY EFFORTS.** In the event of any damages for which Financial Institution or Member may be liable to each other or to a third party pursuant to the services provided under this Agreement, Financial Institution and Member 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.

37. **TERMINATION.** Either party may terminate this Agreement upon 30 calendar days written notice to the other; provided however that Financial Institution may terminate or suspend this agreement immediately upon its determination that Member is in violation of this Agreement, the ACH Rules or applicable laws or if Member initiates any bankruptcy proceeding or is otherwise declared insolvent. Any termination of this Agreement shall not affect any of Financial Institution's rights or Member's obligations with respect to any Entries initiated by Member prior to such termination, or the payment obligations of Member with respect to services performed by Financial Institution prior to termination, or any other obligations that survive termination of this Agreement. Member's obligation with respect to any Entry shall survive termination of this Agreement until any applicable statute of limitation has elapsed.

38. **ENTIRE AGREEMENT.** This Agreement (including the Schedules attached) together with the Depository Agreement, is the complete and exclusive statement of the agreement between the Financial Institution and the Member with respect to the subject matter hereof and supersedes any prior agreement(s) between the Financial Institution with respect to such



ORION FINANCIAL ACH ORIGINATION AGREEMENT

subject matter. In the event of any inconsistency between the terms of this Agreement and the Depository 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 the Financial Institution 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 the Financial Institution shall incur no liability to the Member as a result of such violation or amendment. No course of dealing between the Financial Institution and the Member will constitute a modification of this Agreement, the Rules, or the security procedures, or constitute an agreement between the Financial Institution and the Member regardless of whatever practices and procedures the Financial Institution and the Member may use.

39. **NON-ASSIGNMENT.** The Member may not assign this Agreement or any of the rights or duties hereunder to any person without the Financial Institution's prior written consent.

40. **WAIVER.** The Financial Institution may waive enforcement of any provision of this Agreement. Any such waiver shall not affect the Financial Institution's rights with respect to any other transaction or modify the terms of this Agreement.

41. **BINDING AGREEMENT; BENEFIT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, and assigns. This Agreement is not for the benefit of any other person, and no other person shall have any right against the Financial Institution or the Member hereunder.

42. **HEADINGS.** Headings are used for reference purposes only and shall not be deemed part of this Agreement.

43. **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.

44. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Michigan, without reference to its conflict of laws provisions, and applicable federal law.

45. **SAME DAY ENTRIES.** If Same Day ACH is offered by Financial Institution, a credit or debit Entry with an Effective Entry Date of the date of or a date prior to the date of the transmission



ORION FINANCIAL ACH ORIGINATION AGREEMENT

of the Entry or File to Bank and received by Bank prior to the applicable cut-off time set forth in Schedule B shall be considered a Same Day Entry. Entries in excess of the amount permitted in the Rules and IAT Entries are not eligible for Same Day ACH processing. In addition to any other fees that Member is obligated to pay Bank, Member hereby agrees to pay Bank the Same Day Entry fee established by Bank from time to time for Same Day Entries transmitted to Bank by Member.

46. **Beneficial Ownership Reporting and Certification.** Member represents and warrants to Financial Institution that the beneficial ownership (as that term is defined in the Anti-Money Laundering Act of 2020, Public Law No. 116-283, §6403) of Member as identified in the Deposit Account opening process remains true and correct as of the date Member enters into this Agreement or that Member has provided Financial Institution with written confirmation of the current beneficial ownership information. Further, Member represents and warrants that Member shall immediately notify Financial Institution in writing of any changes, and to complete any and all forms requested by Financial Institution, regarding a change in substantial control of Member and/or any change of ownership or control of 25% or more of the ownership interests in Member.