



### **ACH Origination Agreement**

In consideration of the mutual covenants herein, BankPacific ("Bank") and the undersigned ("Company") have agreed as follows as of the date of acceptance by Bank's authorized representative noted below.

The Company has requested that the Bank permit it to initiate electronic signals through the Bank to account maintained at the Bank and in other banks and financial institutions, by means of the Automated Clearing House (the "ACH") operated by the National Automated Clearing House Association (NACHA).

In consideration of the mutual covenants herein, BankPacific, Ltd. ("Bank") and the undersigned company ("Company") have agreed as follows as of the date of acceptance by Bank's authorized representative noted below:

The Company has requested that the Bank permit it to initiate electronic signals for paperless entries through the Bank to account maintained at the Bank and in other banks and financial institutions, by means of the Automated Clearing House (the "ACH") operated by the National Automated Clearing House Association (NACHA).

1. All provisions of this Agreement and the operating rules of NACHA, as amended from time to time (the "Rules") shall apply to "on us" entries (entries which are not transmitted by the Bank to ACH because the Bank would be the receiving bank) as if such entries were processed through ACH to the Bank as the receiving bank, and the Bank and its customers shall have all rights with respect thereto as if the Bank had been only a receiving bank with respect to such entries.
2. The Bank will transmit the credit and debit entries initiated by the Company directly or indirectly to the ACH as provided in the Operating Rules of NACHA, as in effect from time to time (the "Rules"), and this Agreement. The Rules incorporate the Operating Rules of the National Automated Clearing House Association by reference.
3. The Company will comply with the Rules insofar as applicable. The specific duties of the company provided in the following paragraphs of this Agreement in no way limit the foregoing undertaking.
4. The Company will retain the original or a copy of each authorization received by the Company for two (2) years after termination of revocation of such authorization.
5. The Company will provide Company, User, and Daily Limits information in the manner specified in Enclosure 1 of this Agreement.
6. Each entry or file shall be delivered to the Bank according to the schedule and delivery procedure established by the Bank as set forth in detail in Enclosure 2 (the Bank's deadlines for input) of this Agreement. The parties shall each retain copies of each entry or file sent to the Bank or otherwise shall be able to reconstruct transaction data for a period of sixty (60) business days after the Settlement Date and will submit such copy or such reconstructed entry of file to either party upon request.
7. The Company will provide immediately available funds to cover any credit entry initiated by it not later than the Settlement Date applicable thereto.
8. The Company will receive immediately available funds for any debit entry initiated by it on Settlement Date applicable thereto.
9. If the Company discovers that any entry it has initiated was in error and wishes to reverse, or delete any such entry or file, it shall immediately notify the Bank of such error. The Bank will utilize its best efforts to delete the entry prior to transmittal to the ACH but will not be responsible for any failure to effect such deletion. If such notice from the Company is received prior to 3:00 p.m. on the business day prior to Settlement Date or date of transmission, whichever is earlier, the Bank will utilize its best efforts to delete the entry on behalf of the Company prior to transmittal to the ACH but shall not be responsible for any failure to do so. If such notice from the Company is received thereafter, the Bank will utilize its best efforts to reverse the entry on behalf of the Company, but shall not be responsible for any failure to do so.
10. In the event of an error by the Bank in handling any entry or file, the Company shall immediately, upon discovery, notify the Bank by telephone of any error that the Company desires the Bank to correct. Additionally, such oral notice shall immediately be followed by a written notice of the error to the Bank. The Company shall examine promptly all material received by the Company from the Bank or any other party involved in the paperless entry process and shall notify the Bank in writing within ten (10) business days of receipt by the Company of any material showing such error.
11. In the event any entries are rejected by the ACH for any reason whatsoever, it shall be the responsibility of the Company to remake such entries; provided, however, that the Bank shall remake such entries in any case where such rejection by the ACH was due to mishandling of such entries by the Bank and sufficient data is available to the Bank to permit it to remake such entries. The Company shall retain and provide the Bank, on request, all information necessary to remake any file of entries for three days after midnight of the Settlement Date.
12. The Parties agree that the return of rejected entries shall be governed exclusively by the Rules in effect at the time the entry was transmitted by the Bank. The Bank shall promptly advise the Company of its receipt of a returned entry, or notice of a returned entry, from a receiving depository financial institution ("RDFI"). The Company shall, in turn, promptly notify the Bank of any such returned entry which it believes in good faith may not have been returned by the RDFI in a timely manner ("Late Returns"). All Late Returns shall be reported to the Bank and the Bank shall return the entry to the RDFI. The Company shall reimburse the Bank for its time applied and expenses incurred in connection with the handling of Late Returns, including by way of example and not by way of limitation any time applied or expenses incurred in connection with the arbitration of issues arising from the Late Return.
13. The Company will promptly provide immediately available funds to indemnify the Bank if any debit entry is rejected after the Bank has permitted the Company to withdraw immediately available funds in the amount thereof or if any adjustment memorandum that relates to any such entry is received by the Bank.
14. The Company will indemnify the Bank from all loss and expenses (including reasonable attorney fees) if, with respect to any entries initiated by the Company, the Bank incurs any loss of liability on account of breach, of any of the warranties the Bank must make as an originating Bank contained in the Rules. The Bank may debit the Company's account in satisfaction of any and all claims for indemnity hereunder.
15. The Company will pay to the Bank charges for services rendered to the Company under this Agreement computed in accordance with the Bank's standard schedule of charges for such services. The Bank shall have the right to modify its schedule of charges at any time by thirty (30) days written notice to the Company. Notwithstanding the Bank Service Fees of this Agreement, upon prior written notice to the Company, the Bank shall be entitled to adjust the schedule of charges to the extent that such adjustment is directly attributable to a change in the fees or charges the Bank incurs from a Federal Reserve Bank or clearing house.

16. Failure of ACH or RDFI to Execute Entry Initiations: The Bank's sole responsibility under this Agreement is to make a reasonable effort to execute the Company's entry initiations. THE COMPANY ACKNOWLEDGES THAT THE BANK WILL INCUR NO LIABILITY IN CONNECTION WITH THE FAILURE OR AN ACH OR RDFI TO PROPERLY EXECUTE AN ENTRY INITIATION AS ISSUED BY THE BANK.

17. The Bank makes no warranty of any kind, express or implied, to the Company beyond those provided in this Agreement or in the Rules. Without limiting the generality of the foregoing, THERE ARE NO WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE OF ANY SERVICES PROVIDED HEREUNDER OR ANY OTHER WARRANTY ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE.

18. In the event the Company incurs any loss due to error or mishandling of any entry or file, the Bank shall be liable only for its own negligence or willful misconduct, and only to the extent such liability is consistent with the Rules. The Bank shall not be liable for the acts, omissions or delays of NACHA or of any other party. In the event any liability of the Bank does arise, the amount of such liability shall be limited to the direct loss sustained by the Company as a result of the Bank's error or omission and shall be further limited in amount to the greatest of: (a) The total amount paid by the Company for services under this Agreement during the 12 months preceding the incident in question; or (b) Any amount actually recovered by the Bank from NACHA or any third party pursuant to the Rules of any indemnity agreement.

19. In no event shall the Bank be liable to the Company for any special, indirect, or consequential damages or for any commercial losses or loss of profits.

20. This Agreement is terminable on ten days written notice by either party, provided that applicable portions of this Agreement shall remain in effect with respect to any entries initiated by the Company prior to such termination.

21. To the extent any entry of file provided by the Company to the Bank shall constitute or include any electronic funds transfer as defined in the Electronic Funds Transfer Act (15 U.S.C. Sec. 1639, et seq.), or Regulation "E" hereunder (Part 205, Title XII, Code of Federal Regulations), the Company will comply with the terms of such law and regulations to the extent applicable to it and shall, in addition, take all steps the Bank shall reasonably request to assist the Bank in its compliance with such law and regulation. In the event investigation of any error with respect to a consumer account becomes necessary, the Company shall fully cooperate with the Bank and make its records fully and completely available for such purpose.

22. This Agreement and the Rules contain the entire agreement of the parties. No provision thereof may be modified except in writing, signed by the party against whom such modification is sought to be enforced. No waiver of any right by a party on one occasion shall be deemed a waiver of the same or any other right on a subsequent occasion.

23. This Agreement shall inure to the benefit and be binding upon the successors and assigns of the parties hereto.

24. This Agreement shall be interpreted under the laws of the Territory of Guam.

25. Until notified in writing to the contrary, notice to the Bank and the Company shall be addressed as follows:

If to the Bank:

BankPacific  
151 Aspinall Ave.  
Hagatna, Guam 96910  
Attention: BP Service Center – CASH MANAGEMENT

If to the Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

26. The Bank shall be excused by the Company for delays in performing and failures to perform this Agreement to the extent that any such delay or failure results from any cause beyond the reasonable control of the Bank, including, solely by way of example and without limitation, delays caused by the Company; acts of God, strikes, and other labor disputes; civil disorder; catastrophes of nature, fire, explosion, natural or man-made floods or any severe weather, war; nuclear attack; embargoes; actions or inactions of governmental authorities affecting either the Bank or suppliers to the Bank. The Bank agrees to make reasonable efforts to prevent such occurrences from affecting the execution of this Agreement.

**IN WITNESS WHEREOF**, the undersigned have duly executed the Agreement by their duly authorized officers.

**BANKPACIFIC, LTD**

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

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

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