

# FIRST COMMUNITY CREDIT UNION

## ACH ORIGINATION AGREEMENT

**Contact Number for Telephone Notifications: (281)856-5300**

This Agreement, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ is by and between the Originator, \_\_\_\_\_ [*Company Name*] located at \_\_\_\_\_ and hereinafter referred to as “Company” and the Originating Depository Financial Institution, First Community Credit Union, located at 15260 FM 529, Houston, TX 77095, hereinafter referred to as “Financial Institution.”

### RECITALS

- A. Company wishes to initiate Credit Entries and/or Debit Entries by means of the Automated Clearing House (“ACH”) Network pursuant to the terms of this Agreement and the Rules of the National Automated Clearing House Association (“NACHA”). Financial Institution agrees to be the Originating Depository Financial Institution (“ODFI”) with respect to such Entries.
- B. Unless otherwise defined herein, capitalized terms appearing in this Agreement shall have the meanings provided in the Rules (as defined below)

### **Definitions**

**Rules** – Means the rules of the National Automated Clearing House Association and the Appendices to the Rules, all as amended periodically.

**Effective Entry Date** – Means the date included in any Entry as the date upon or after which such Entry is to be effective.

**Entry** – Has the meaning given in the Rules, except that it shall also include data received from Company hereunder from which Financial Institution prepares Entries. “Entry” shall also mean a Prenotification and an On-U.S. Entry.

**On-U.S. Entry** – Means a debit or credit Entry to an account maintained at Financial Institution.

**Prenotification** – Means a non-monetary Entry initiated prior to the transmittal of the first debit or credit Entry to a Receiver’s account. This type of Entry notifies the Receiving Depository Financial Institution that the Company intends to initiate one or more Entries to the Receiver’s account and validates the existence of the account.

**On-Line** – Means the Internet website designated by Financial Institution used to transmit or receive electronic transactions, instructions, notices or other

communications, but does not include transmissions by telephone, fax, in person, regular mail, express mail, or email.

**ACH Administrator** – Means the individual account owner or one or more individuals so designated by the account owner. The ACH Administrator shall have the same authority to act on accounts as an Authorized User and will be considered to be an Authorized User for all purposes.

**Authorized User** – Means individuals authorized by the ACH Administrator or Company to act on behalf of Company with respect to the accounts listed on Schedule “C” attached hereto.

## **AGREEMENT**

- 1. Applicable Agreements.** This Agreement governs Company’s use of the ACH Origination service (the “Service”). This Service is also subject to the Deposit Agreement for First Community Credit Union (“Deposit Agreement”). In the event of conflict between this Agreement and any other agreement with Financial Institution, this Agreement shall prevail, unless otherwise provided herein or in the other agreement.
  
- 2. Compliance with the Rules and Applicable Law.** The Company’s rights and obligations with respect to each Entry are governed by the Rules, the policies, procedures, and rules of Financial Institution and the Southwestern Automated Clearing House Association, this Agreement, and applicable law, as all may be amended from time to time. Company shall obtain and maintain the most current version of the Rules at all times at its own expense and agrees to be bound by such Rules. Company may purchase a copy of the Rules at [www.swacha.org](http://www.swacha.org) or [www.nacha.org](http://www.nacha.org). Company represents and warrants that it will comply with the Rules and applicable laws, regulations, and regulatory requirements and that it will not transmit any Entry or engage in any act or omission that violates or causes Company or Financial Institution to violate the Rules, laws of the United States, regulations or regulatory requirements, including, without limitation, the Electronic Fund Transfers Act, Consumer Financial Protection Bureau Regulation E, Chapter 4A of the Texas Business and Commerce Code (UCC Article 4A, as adopted in Texas), regulations of the Office of Foreign Asset Control (OFAC) or U.S. sanctions or executive orders. Company shall permit Financial Institution to audit Company’s compliance with this Agreement and the Rules upon reasonable notice to Company and at a reasonable time. Company shall cooperate and assist Financial Institution in any such audit.
  
- 3. Transmittal of Entries by Company.**
  - (a) Company shall transmit Entries to the Financial Institution in accordance with the Rules and this Agreement, and in compliance with the formatting, limitations, and other requirements set forth in Schedule “A” attached hereto. Company acknowledges that Entries may not be initiated that violate the laws of the United States. The total dollar amount of Entries transmitted by Company to Financial Institution on any one day shall not exceed the File limits as set forth in Schedule “A” attached hereto.

- (b) Company hereby authorizes the Financial Institution to transmit any Entry received by the Financial Institution from the Company in accordance with the Rules and the terms of this Agreement and to credit or debit the amount of such Entry to the Receiver account specified by the Company.

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

(a) Company and Financial Institution shall comply with the security procedures described in Schedule "B" attached hereto with respect to all Entries and all other Entry-related requests transmitted or made by Company to Financial Institution under this Agreement. Company agrees that the security procedures specified on Schedule "B" are commercially reasonable in view of Company's particular circumstances, including without limitation, the size, type, and frequency of Entries that Company anticipates. Financial Institution may take additional actions to verify the authenticity of an Entry or to detect fraud or errors when it deems those actions necessary. If Financial Institution is unable to verify the authenticity of an Entry pursuant to the security procedures, Financial Institution may decline to process the Entry. If at any time Company's circumstances change such that Company has reason to believe the security procedures are no longer adequate in view of Company's particular situation, Company will immediately notify Financial Institution. Company acknowledges that the purpose of the security procedures is for verification of authenticity and not to detect an error in the transmission or content of an Entry.

(b) To the extent elements of the security procedures are within Company's control, Company is strictly responsible to establish, implement, and maintain measures to satisfy those elements and safeguard against unauthorized transmissions, including but not limited to the installation and maintenance of antivirus software and operating system updates. Company warrants that no individual will be allowed to initiate transfers in the absence of proper supervision and safeguards, and Company agrees to take reasonable steps to maintain the confidentiality of the security procedures and any passwords, codes, security devices, and related instructions (collectively, "Security Items") provided by Financial Institution in connection with the security procedures described in Schedule "B." Company agrees to disclose the security procedures and the Security Items only to its ACH Administrator and Authorized Users who need to know the security procedures, and not to any other person, company, organization, or governmental entity unless required by law. Company will not make or allow anyone else to make any copies, in whole or in part, of the security procedures or any of the Security Items or to disassemble or reverse engineer any of the Security Items. If Company believes or suspects that the security procedures or the Security Items have been accessed or otherwise compromised in an unauthorized manner, Company agrees to orally notify Financial Institution immediately at the telephone number provided above, followed by written notification within two Business Days. Company also shall immediately notify Financial Institution at the telephone number above if Company becomes aware of any errors or other problems related to the Service. The occurrence of unauthorized access will not affect any transfers made in good faith by Financial Institution prior to receipt of such notification and within a reasonable time period to prevent unauthorized transfers. Upon termination of this Agreement, Company will (i) immediately cease using the Service and the Security Items, and (ii) at the option of Financial Institution, either return or destroy

the Security Items with written certification of such destruction on Financial Institution's request.

(c) Company is responsible for notifying Financial Institution of any changes to an ACH Administrator or Authorized User's status or contact information used to send notifications or security material.

(d) In accordance with the Rules, Company shall establish, implement, and, as appropriate, update its security policies, procedures, and systems related to the initiation, processing, and storage of Entries and resulting Protected Information.

#### **5. Compliance With Security Procedures.**

(a) Company agrees that Financial Institution may rely and act upon, and Company assumes full responsibility for, all Entries, the authenticity of which have been verified by Financial Institution through the use of the security procedures. If an Entry (or a request for cancellation or amendment of an Entry) received by Financial Institution purports to have been transmitted or authorized by Company, it will be deemed by Financial Institution to be effective as Company's Entry (or request) and Company shall be obligated to pay Financial Institution the amount of such Entry even though the Entry (or request) was not authorized by Company, provided Financial Institution accepted the Entry in good faith and acted in compliance with the security procedures referred to in Schedule "B" with respect to such Entry. In the event the Financial Institution deems additional security procedures are required, signature comparison may be utilized as a security procedure. Financial Institution shall be deemed to have complied with that part of such security procedure if it compares the signature accompanying a File of Entries (or request for cancellation or amendment of an Entry) received with the signature of the ACH Administrator or an Authorized User of Company on file with Financial Institution and, on the basis of such comparison, believes the signature accompanying such File to be that of such ACH Administrator or Authorized User.

(b) If an Entry (or request for cancellation or amendment of an Entry) received by Financial Institution was transmitted or authorized by Company, Company shall pay Financial Institution the amount of the Entry, whether or not Financial Institution complied with the security procedures referred to in Schedule "B" with respect to that Entry and whether or not that Entry was erroneous in any respect or that error would have been detected if Financial Institution had complied with such security procedures.

**6. Recording and Use of Communications.** Company and Financial Institution agree that all telephone conversations or data transmissions between them or their agents made in connection with this Agreement may be, but are not required to be, electronically recorded and retained by either party by use of any reasonable means. If requested, Company will obtain and provide any authorizations required from Company's personnel to record communications with Financial Institution.

#### **7. Processing, Transmittal and Settlement by Financial Institution.**

(a) Entries and all Entry-related requests shall be presented to Financial Institution by electronic means only in accordance with Schedule "A" and the security procedures in

Schedule “B” attached hereto. Except as provided in Section 8, “**On-Us Entries,**” and Section 9 “**Rejection of Entries,**” and provided that the Entries conform to Section 3, “**Transmittal of Entries by Company**” of this Agreement and the security procedures, Financial Institution shall (i) process Entries received from Company to conform with the File specifications set forth in the Rules, (ii) transmit such Entries as an ODFI to the appropriate Automated Clearing House Operator (“ACH Operator”), and (iii) settle for such Entries as provided in the Rules.

(b) Financial Institution shall transmit such Entries to the ACH Operator by the deadline of the ACH Operator set forth in Schedule “A” attached hereto prior to the Effective Entry Date shown in such Entries, provided (i) such Entries are received by Financial Institution’s related cut-off time set forth on Schedule “A” on a Business Day, (ii) the Effective Entry Date is at least one day after such Business Day and (iii) the ACH Operator is open for business on such Business Day. For purposes of the Agreement, (a) a “Business Day” is a day on which Financial Institution’s corporate office is open for carrying on substantially all of its business (generally, Monday through Friday, except for federal holidays), and (b) Entries shall be deemed received by Financial Institution when the transmission (and compliance with any related security procedures provided for herein) is completed and received by Financial Institution as provided in Schedule “A.”

(c) If any of the requirements of clause (i), (ii) or (iii) of Section 7(b) are not met, Financial Institution shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline of the ACH Operator following that specified in Schedule “A,” which is a Business Day and a day on which the ACH Operator is open for business.

**8. On-Us Entries.** Except as provided in Section 9, “**Rejection of Entries,**” in the case of an Entry received for credit to an account maintained with Financial Institution (On-Us Entry), 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 clauses (i) and (ii) of Section 7(b), “**Processing, Transmittal, and Settlement by Financial Institution**” are met. If either of those requirements is not met, Financial Institution shall use 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.

**9. Rejection of Entries.** Financial Institution may reject any Entry which does not comply with the requirements of Section 3. “**Transmittal of Entries by Company,**” or Section 4. “**Security Procedures,**” or which contains an Effective Entry Date more than two days after the Business Day such Entry is received by Financial Institution. Financial Institution may reject an Entry for any reason for which an Entry may be returned under the Rules or for any other reason in Financial Institution’s sole discretion with or without cause. Financial Institution may reject any Entry if Company has failed to comply with its account balance obligations under Section 18. “**The Account.**” Financial Institution may reject any Entry if Company does not adhere to the security procedures as described in Schedule “B.” Financial Institution shall attempt to notify Company by telephone of such rejection no later than the Business Day such Entry would otherwise have been transmitted by Financial Institution to the ACH Operator or, in the case of an On-Us Entry, its Effective Entry Date. Notices of rejection shall be effective when first

given. Financial Institution shall have no liability to Company for rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided herein.

**10. Cancellation or Amendment of Entries by Company.** Company shall have no right to cancel or amend any Entry after its receipt by Financial Institution. However, if such request complies with the security procedures described in Schedule “B” for the cancellation of Data, Financial Institution shall use reasonable efforts to act on a request by Company for cancellation of an Entry prior to transmitting it to the ACH Operator or, in the case of an On-Us Entry, prior to crediting or debiting a Receiver’s account, but shall have no liability if such cancellation is not effected. Company shall reimburse Financial Institution for any expenses, losses, or damages Financial Institution may incur in effecting or attempting to effect Company’s request for the reversal of an Entry.

**11. Notice of Returned Entries.**

(a) Financial Institution shall notify Company by telephone of the receipt of a returned Entry from the ACH Operator no later than one Business Day after the Business Day of such receipt. Except for an Entry retransmitted by Company in accordance with the requirements of Section 3. “**Transmittal of Entries by Company,**” 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. Any required reprocessing will be at Company’s expense, and in accordance with Financial Institution’s then-prevailing fees and charges, unless the Entry was returned due to an error solely made by Financial Institution.

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

(i) **Unauthorized Rate in Excess of 1%.** In the event the rate of unauthorized transactions exceeds 1% based on the calculations noted in the Rules, Company will provide information requested by the Financial Institution based on the Rules and will immediately begin the process of bringing the rate below 1%. Financial Institution may suspend the processing of Files until Company has provided such resolution. In the event Company does not provide resolution within 30 days, Financial Institution may terminate this Agreement.

**12. Reversals.** Company may reverse a File or Entry pursuant to the Rules, but Financial Institution shall have no liability if any such reversal is not effected. If the Company reverses an Entry or File, the Company shall indemnify Financial Institution against any claim, alleged claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.

**13. 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 another ACH Operator 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 Company will not be considered to have paid the amount of the credit Entry to the Receiver.

**14. Inconsistency of Name and Account Number or RDFI Identifying Number.**

(a) Company acknowledges and agrees that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry transmitted by Financial Institution to the RDFI may be made by the RDFI (or by Financial Institution in the case of an On-Us Entry) on the basis of the account number supplied by Company, even if it identifies a person different from the named Receiver, and that Company's obligation to pay the amount of the Entry to Financial Institution is not excused in such circumstances.

(b) Company acknowledges and agrees that, if there is an inconsistency between the RDFI's name and the RDFI's identifying number in an Entry, Financial Institution may make payment of the Entry on the basis of the RDFI's identifying number alone.

**15. Notifications of Change.** Financial Institution shall notify Company, in writing, of all Notifications of Change or Corrected Notifications of Change received by Financial Institution relating to Entries transmitted by Company no later than two Business Days after receipt thereof. Company shall ensure that changes requested by a Notification of Change or Corrected Notification of Change are made within six Business Days of Company's receipt or prior to initiating another Entry to the Receiver's account, whichever is later.

**16. Payment by Company for Entries.** Company shall pay Financial Institution the amount of each credit Entry transmitted by Financial Institution pursuant to this Agreement, and Company shall pay the amount of each debit Entry returned by an RDFI that was transmitted by Financial Institution pursuant to this Agreement.

**17. Exposure Limits.** Company shall comply with the exposure limits as set forth in Schedule "A." Such limits may be modified from time to time by Financial Institution at its sole discretion with notice to Company.

**18. Account.** Financial Institution may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting any of the Company account(s) identified in Schedule "C" attached hereto (collectively, the "Account") and shall credit the Account of Company for any amount received by Financial Institution by reason of the return of an Entry transmitted by Financial Institution for which Financial Institution has previously received payment from Company. Such credit shall be made as of the day of receipt of return by Financial Institution. Company shall at all times maintain a balance of available funds in the Account sufficient to cover its payment obligations under this Agreement. In the event there are not sufficient available funds in the Account to cover Company's obligations under this Agreement, Financial Institution shall have no obligation to transmit such

Entries. However, Company agrees that Financial Institution may debit any account maintained by Company with Financial Institution or any affiliate of Financial Institution or that Financial Institution may set off against any amount it owes to Company, in order to obtain payment of Company's obligations under this Agreement. If there are insufficient clear and collected funds in the Account to cover Company's obligations, Company will immediately pay Financial Institution for such obligations whether or not demand is made. Company represents and warrants that, at all times during the term of this Agreement, the Account will be maintained primarily for commercial, and not personal, family, or household purposes. Company additionally represents and warrants that the debiting of the Account as provided in this Agreement is not inconsistent with any restriction on the use of the Account.

**19. Account Reconciliation; Error Resolution.** Entries transmitted by Financial Institution or credited to a Receiver's Account maintained with Financial Institution will be reflected on Company's periodic statement issued by Financial Institution with respect to the Account pursuant to the agreement between Financial Institution and Company. The statement will be considered delivered to the Company whether sent via mail or through electronic means. Company agrees to notify Financial Institution immediately at the telephone number above of (a) any error or discrepancy between Company's records and the information shown on any periodic statement or any other information provided by Financial Institution to Company and (b) unauthorized transactions involving any Account. Company shall also immediately take any and all action within Company's control to limit losses in the event of unauthorized use, such as by deleting an ACH Administrator or Authorized User's access to the Service. If Company fails to give immediate notice as required by this section, Financial Institution will not be liable for any losses resulting from Company's failure to give such notice or for loss of interest or any interest equivalent relating to the unauthorized or erroneous Entry or discrepancy. If Company fails to notify Financial Institution of any error, discrepancy, or unauthorized use within 60 days of the date the periodic statement containing such information is mailed or otherwise made available, Company agrees that Company shall be absolutely precluded from asserting such discrepancy or unauthorized use against Financial Institution. Company shall cooperate in the resolution of errors asserted by the Receivers under Regulation E and other applicable law and authority.

**20. Security Interest** To secure prompt payment and performance of Company's obligations under this Agreement, Company grants Financial Institution a security interest in the Account and in all other eligible Company accounts held with Financial Institution, including any reserve amounts held in such accounts. In the event of the insolvency or bankruptcy of Company, Financial Institution shall be deemed a secured party for all purposes with respect to the Account and any other eligible accounts.

**21. Company Representations And Agreements; Indemnity.**

(a) With respect to each and every Entry initiated by Company, Company represents and warrants to Financial Institution and agrees that (a) each person shown as the Receiver on an Entry received by Financial Institution from Company has authorized the initiation of such Entry and the crediting/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/debiting by Financial institution as provided herein, (c) Entries



transmitted to Financial Institution by Company are limited to those types of Entries set forth in Schedule "A" attached hereto, as amended from time to time (d) Company shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, including the Electronic Fund Transfers Act and CFPB Regulation E, Texas Business and Commerce Code Chapter 4A, and the sanctions laws administered by the United States Department of Treasury, Office of Foreign Assets Control, and (e) Company shall be bound by and comply with the Rules as in effect from time to time, including, without limitation, the provision making payment of an Entry by the RDFI to the Receiver provisional until receipt by the RDFI of final settlement for such Entry. Company 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 Company shall not be deemed to have paid the Receiver the amount of the Entry. Company shall indemnify defend, and hold Financial Institution (including its directors, officers, employees, and agents) harmless against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any breach of any of the foregoing warranties, representations, or agreements.

(b) Company represents and warrants that each Entry provided to the Financial Institution complies in all respects with the Rules and this Agreement. Company acknowledges and agrees that, pursuant to the Rules, the Financial Institution 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 Company, including but not limited to those contained in this section of this Agreement and (ii) Company's agreement to be bound by the Rules and applicable law. Company shall indemnify, defend, and hold Financial Institution (including its directors, officers, employees, and agents) harmless 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 Company's warranties or this Agreement; (ii) Company's failure to exercise ordinary care in connection with its duties hereunder; (iii) any action by the RDFI upon an unauthorized or erroneous Entry initiated by Company; (iv) any actions by a service provider or agent of Company that results in a breach of this Agreement by Company; (v) to the extent that it involves the Financial Institution, any litigation by an ACH Operator, an RDFI, or any Company Receivers asserting noncompliance on Company's part with the Rules, laws, regulations or regulatory requirements. Without limiting the foregoing, Company further represents and warrants:

(i) Each Entry is authorized pursuant to the Rules and the authorization has not been revoked;

(ii) Each credit Entry is timely and accurate;

(iii) Each debit Entry is (a) for a sum which, on the Settlement Date will be due and owing to Company from the party whose account will be debited, (b) is for a sum specified by such party, or (c) is to correct a previously transmitted erroneous credit Entry;

(iv) No Entry has been reinitiated in violation of the Rules;

(v) Company 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.

(vi) Company has all corporate power and authority to execute, deliver, and perform this Agreement.

**22. Financial Institution Responsibilities; Liability; Limitations on Liability; Indemnity.**

(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 Company 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, subject to applicable law. Financial Institution shall not be responsible for Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal, or authorization of any Entry received from Company) or those of any other person, including without limitation any Federal Reserve Bank or any other ACH Operator, any ACH or transmission or communications facility, any Receiver or RDFI (including without limitation the return of an Entry by such Receiver or RDFI), and no such person shall be deemed Financial Institution's agent. Company shall indemnify, defend, and hold Financial Institution (including its directors, officers, employees, and agents) harmless against any loss, liability or expense (including attorneys' fees and expenses) resulting from or arising out of any claim of any person that the Financial Institution is responsible for any act or omission of Company or any other person described in this section.

(b)(i) FINANCIAL INSTITUTION'S ENTIRE LIABILITY AND COMPANY'S SOLE REMEDY FOR CLAIMS ARISING FROM FINANCIAL INSTITUTION'S OBLIGATIONS TO COMPANY UNDER THIS AGREEMENT SHALL BE LIMITED TO COMPANY'S ACTUAL DAMAGES, NOT TO EXCEED \$25,000; IN NO EVENT SHALL FINANCIAL INSTITUTION BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT LOSS OR DAMAGE WHICH COMPANY 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 COMPANY MAY ASSERT, INCLUDING, WITHOUT LIMITATION, LOSS OR DAMAGE FROM SUBSEQUENT WRONGFUL DISHONOR RESULTING FROM FINANCIAL INSTITUTION'S ACTS OR OMISSIONS PURSUANT TO THIS AGREEMENT.

(ii) FOR ENTRIES SUBJECT TO CHAPTER 4A OF THE TEXAS BUSINESS & COMMERCE CODE ("CHAPTER 4A"), FINANCIAL INSTITUTION WILL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF OR IN CONNECTION WITH ITS PERFORMANCE UNDER THIS AGREEMENT OTHER THAN THOSE DAMAGES REQUIRED TO BE PAID BY CHAPTER 4A; EXCEPT THAT, ANY DAMAGES

REQUIRED UNDER CHAPTER 4A WILL BE SUBJECT TO THE LIMITATIONS AS PROVIDED HEREIN, TO THE EXTENT PERMITTED BY APPLICABLE LAW.

(c) Without limiting the generality of the foregoing provisions, Financial Institution shall not be liable for 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 Institution shall not be liable for 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 Board guidelines or in Financial Institution's reasonable judgment otherwise violating any provision of any present or future risk control program of the Federal Reserve Board 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 effective Federal Funds rate at the Federal Reserve Board of Dallas, or other applicable Federal Reserve Board, for the period involved. At Financial Institution's option, payment of such interest may be made by crediting the Account.

**23. Payment for Service.** Company shall pay Financial Institution the charges for the Service provided in connection with this Agreement, as set forth in Schedule "D" attached hereto. All fees for services are subject to change upon 30 calendar days prior written notice from Financial Institution to Company. Such charges do not include, and Company shall be responsible for payment of, any sales, use, and excise, value added, utility or other similar taxes relating to the Service, and any fees or charges provided for in the agreement between Financial Institution and Company with respect to the Deposit Agreement. Other fees and charges payable by Company under this Agreement are payable within 30 days of the invoice date. Fees and charges not paid by the payment due date are subject to interest at a rate of 1.5% per month or the maximum interest rate permitted by law, whichever is higher. Company is responsible for any telecommunications costs including connectivity to Financial Institution's systems and communications (e.g., texting) charges related to security procedures.

**24. Amendments.** From time to time Financial Institution may add to, modify, or delete any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any Business Day, and any part of the Schedules attached hereto. Such amendments shall become effective upon receipt of notice by Company or such later date as may be stated in Financial Institution's notice to Company.

**25. Notices, Instructions, Authorized Users.** Except as otherwise expressly provided herein, Financial Institution shall not be required to act upon any notice or instruction received from Company or any other person, or to provide any notice or advice to Company or any other person with respect to any matter.

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 the ACH Administrator or an Authorized User, and any such communication shall be

deemed to have been signed by such person. The names and signatures of the ACH Administrator and the other Authorized Users are set forth in Schedule "E" attached hereto. The ACH Administrator (the first Authorized User listed on Schedule "E" attached hereto) or the Company may add or delete any Authorized User in accordance with the requirements set forth in Schedule "E."

Except as otherwise expressly provided herein, any written notice or other written communication required or permitted to be given under this Agreement shall be delivered, or sent by United States registered or certified mail, postage prepaid, or by express carrier to Financial Institution, addressed to:

First Community Credit Union  
Attn: Business Services  
15260 FM 529  
Houston, TX 77095

And, if to Company, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

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

**26. Data Retention.** Company shall retain data on file adequate to permit remaking of Entries for one year following the date of their transmittal by Financial Institution as provided herein, and shall provide such Data to Financial Institution upon its request. Company is responsible to retain all items, source documents, and records of authorization in accordance with the Rules.

**27. Release of Company Records.** Company agrees to provide Financial Institution with due diligence information when requested. This information may include, but is not limited to, financial data, names, and other information concerning the Company principals, information about the business in which Company participates, information regarding the creditworthiness of Company, projected return rates, and payment history. Financial Institution may, in its reasonable discretion, conduct a limited review of Company's operations to ensure compliance with the provisions of this Agreement and the Rules. If Financial Institution reasonably believes that Company's financial condition is impaired or deteriorating, Financial Institution may refuse to process any Entries, may require Company to timely establish reserves, or may require prefunding of all Entries.

**28. Electronic Media and Records.** All electronic media, Entries, security procedures and related records used by Financial Institution for transactions contemplated by this Agreement shall be and remain Financial Institution's property. Financial Institution may, at its sole discretion, make available such information upon Company's request. Any

expenses incurred by Financial Institution in making such information available to Company shall be paid by Company.

**29. Evidence of Authorization.** Company shall obtain all consents and authorizations required under the Rules and shall retain such consents and authorizations for two years after they expire.

**30. Cooperation in Loss Recovery Efforts.** In the event of any damages for which Financial Institution or Company may be liable to each other or to a third party pursuant to the Service provided under this Agreement, Financial Institution and Company 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.

**31. Termination.** Company may terminate this Agreement upon 30 days written notice to Financial Institution except that Company may terminate the Agreement immediately if the terms of the Agreement are materially breached by Financial Institution and such breach is not cured within 10 Business Days upon Financial Institution's receipt of written notice of such breach from Company. Such notice shall describe the breach in particular. Subject to applicable law, Financial Institution reserves the right to immediately terminate or suspend this Agreement, in whole or in part, without liability and for any reason in its sole discretion, including without limitation, due to Company's bankruptcy, insolvency, breach of the Rules, or closure of its accounts at Financial Institution. Upon providing written notice of such termination to Company. Any termination of this Agreement shall not affect any of Financial Institution's rights and Company's obligations with respect to Entries initiated by Company prior to such termination, or the payment obligations of Company with respect to services performed by Financial Institution prior to termination, or any other obligations that survive termination of this Agreement.

**32. Entire Agreement.** This Agreement (including the Schedules attached hereto), together with the Deposit Agreement, is the complete and exclusive statement of the agreement between Financial Institution and Company with respect to the subject matter hereof and supersedes any prior agreement(s) between Financial Institution and Company with respect to such subject matter. 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 or industry policy to which 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 Financial Institution shall incur no liability to Company as a result of such violation or amendment. No course of dealing between Financial Institution and Company will constitute a modification of this Agreement, the Rules, or the security procedure or constitute an agreement between the Financial Institution and Company regardless of whatever practices and procedures Financial Institution and Company may use.

**33. Non-Assignment.** Company may not assign this Agreement or any of the rights or duties hereunder to any person without Financial Institution's prior written consent.

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

**35. 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 Financial Institution or Company hereunder.

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

**37. 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.

**38. Dispute Resolution.** Except for collection of amounts owed under this Agreement, in the event of any dispute or controversy arising out of this Agreement, or its interpretation, the parties shall first attempt in good faith to resolve their dispute informally, without the necessity of a formal proceeding. In the event the dispute cannot be resolved informally (including by commercial mediation), the parties agree to submit the dispute to arbitration under the rules of the American Arbitration Association, upon written notice of demand for arbitration by the party seeking arbitration, setting forth the specifics of the matter in controversy or the claim being made. The arbitration shall be heard before an arbitrator knowledgeable in the ACH network and ACH Rules and mutually agreeable to the parties; provided that, if the parties cannot agree on the choice of an arbitrator within 10 days after the first party to seek arbitration has given written notice, then the arbitration shall be heard by three arbitrators, one to be chosen by each party, and the third to be chosen by the two arbitrators. A hearing on the merits of all claims for which arbitration is sought by any party will commence no later than 60 days from the date of the first demand for arbitration. The arbitrators must render a decision within 10 days after the conclusion of such hearing. Any award in such arbitration shall be final and binding upon the parties and a judgment based on such decision may be entered in any court of competent jurisdiction. The prevailing party in any such arbitration shall be entitled to reimbursement of its necessary fees and expenses for the arbitration. Notwithstanding any of the foregoing, a party may seek temporary or preliminary equitable relief at any time to prevent material and irreparable injury.

**39. ACH Rules.** Company and Financial Institution agree to be bound by and comply with the most recent edition of the Rules as set forth by NACHA in effect at all times including any periodic amendments that may be released. Company agrees to obtain and keep on hand the most recent edition of the Rules at all times.

(a) **Rules Enforcement.** In the event that a Report of Possible Rules Violation is filed on Company, Company will take appropriate steps to correct the problem within the time frames suggested by Financial Institution. In the event that a fine is levied against Financial Institution for a violation of the Rules resulting from the actions or

inactions of Company, Company agrees to make the Financial Institution whole for the value of the fine.

(b) **ACH Rules Compliance Review.** Company agrees to review its compliance with the Rules on a periodic basis. Company agrees to provide Financial Institution a copy of the results of its periodic reviews upon request.

**40. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the State of Texas without regard to its conflicts of law provisions. Venue for resolution of disputes shall be in Harris County, City of Houston, Texas.

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

<u>First Community Credit Union</u>	_____	_____
Financial Institution		Company

By _____	By _____
----------	----------

Name _____	Name _____
------------	------------

Title _____	Title _____
-------------	-------------

## SCHEDULE "A"

### DELIVERY OF FILES

#### A. Delivery location

Company will ensure that Files will only be presented to Financial Institution by Authorized Users of Company as identified in Schedule "E" –Authorized Users via the secure website outlined in Schedule "B" - Security Procedures.

#### B. Format and content of Entries

1. Company agrees to provide Files to Financial Institution in an agreed upon format that adheres to *Appendix 1 – ACH File Exchange Specifications* and *Appendix 3 – ACH Record Format Specifications* of the most recent edition of the ACH Operating Rules so as to allow Financial Institution to accurately and efficiently process the ACH files. The preferred format is the National Automated Clearing House Association (NACHA) File format as specified in the Rules.

#### C. Notification of Receipt and Processing

1. Company may make arrangements within the Online Banking program for the ACH Administrator or an Authorized User to receive an email notification when a File has been received and processed by Financial Institution.
2. If at any time the ACH Administrator or an Authorized User receives a notification or becomes aware that a file was uploaded and no such activity was authorized by the Company, Company must immediately notify the Financial Institution.

#### D. Timing of Delivery

1. Company agrees to deliver Files to Financial Institution according to the following schedule:
  - a) Debit Files: No later than 3:00 p.m. (Central Time) on the day before the Effective Entry Date (date of charge). Debit Files can only be submitted the day before they are to be processed.\*

\* The CCD Corporate Debit Entry is planned to be offered at a later date and may not be available at the time of this Agreement. Contact Financial Institution or check Financial Institution's website to confirm the availability of this service.

- b) Credit Files: No later than 3:00 p.m. (Central Time) on the day before the Effective Entry Date (date of payment) and no earlier than two days prior to the Effective Entry Date. Company understands that submission of



Files only one day in advance does not ensure that payments to recipients will be received by the *opening of business* on the Effective Entry Date, only that payments to recipients will be received *by* the Effective Entry Date.

2. Company agrees to deliver prenotification information to Financial Institution according to the following schedule:
  - a) Initial ACH file: No later than 6 Business Days previous to the first ACH file settlement date. All entries within the file must be verified prior to transmittal of the first ACH file.
  - b) New or updated recipient information: No later than 6 Business Days previous to the first ACH file settlement date.

**E. Exposure Limits**

The total dollar amount of Entries transmitted by the Company to the Financial Institution on any single day shall not exceed the amount as determined by Financial Institution and documented on the ACH Limit Application approved by Financial Institution. Company understands that Files submitted in excess of these amounts will not be accepted or processed by Financial Institution. Company may request, in writing, an increase in the authorized File limits at which time Financial Institution will review the financial records of the Company in accordance with Section 27, "**Release of Company Records,**" of this Agreement.

**F. Notice by Financial Institution**

If an Entry is rejected, returned or if a notification of change (NOC) is received, **the Financial Institution shall notify one or more of the Authorized Users of Company** identified in Schedule "E" – Authorized Users.

**G. ACH Origination Services Offered**

Standard Entry Class (SEC) codes currently accepted are listed below.

PPD – Prearranged Payment and Deposit Entry

CCD – Corporate Credit or Debit Entry\*

\* The CCD Corporate Debit Entry is planned to be offered at a later date and may not be available at the time of this Agreement. Contact Financial Institution or check Financial Institution's website to confirm the availability of this service.

## SCHEDULE "B"

### SECURITY PROCEDURES

- A. The following sets forth the security procedures with which the Company agrees to comply when transmitting or delivering Entries to the Financial Institution:
1. Company agrees to provide Financial Institutional with complete, accurate and current information in writing for the ACH Administrator and each and every Authorized User, including without limitation mobile phone and email contact information. Company, the ACH Administrator, and the Authorized Users are responsible for cellular and data charges related to the use of their mobile phone.
  2. Company's Authorized User will access the Financial Institution's Online Banking program to deliver the ACH Files. Financial Institution will transmit to the designated Authorized User's registered telephone, text, and/or email address, a one-time-use token following a request to send an ACH File. The message may take up to several minutes to be delivered. Logging on again before receiving and using the first code will cause the current token to expire and new token will be required.
  3. The Authorized User will upload the ACH File to the Online Banking program for processing and, if Company has made arrangements within the Online Banking program to receive email notification, Financial Institution will send a confirmation email to the designated Authorized User after the ACH File has been processed.
  4. Company agrees that if at any time the Company or the designated Authorized User receives an email notification or otherwise becomes aware that a file was uploaded, and no such activity was authorized by the Company, the Company will immediately contact the Financial Institution at the telephone number provided at the beginning of the Agreement.
- B. Company acknowledges that many factors impact the delivery of electronic communications like email and text messaging. Financial Institution will use reasonable efforts to deliver these communications, but is not responsible for the performance or unauthorized access to systems not under the Financial Institution's control including Internet service providers (ISPs), mobile carriers or email providers.
- C. Company acknowledges and agrees that Financial Institution, in its sole discretion, may take additional actions to verify the authenticity of the Authorized Users, Files and Entries, and to detect fraud or errors when Financial Institution deems those actions necessary. Company, the ACH Administrator, and the Authorized Users agree to provide reasonable cooperation to assist Financial Institution in deterring, detecting, and preventing unauthorized transactions and other fraudulent activity.
- D. Company agrees that the Security Procedure set forth herein is commercially reasonable in view of Company's particular circumstances, including without limitation, the size, type, and frequency of Entries that Company anticipates.

COMPANY

By (Name/Title: \_\_\_\_\_

Signature: \_\_\_\_\_

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

**SCHEDULE "C"**

**ACCOUNTS OF COMPANY**

Company maintains the following account(s) with Financial Institution:

_____	_____
Account #	Account Name
_____	_____
Account #	Account Name
_____	_____
Account #	Account Name

The Account to be used to initiate the ACH Entries is Account \_\_\_\_\_.

*Credit Files:*

Company shall ensure that the Account is adequately funded at the time the ACH File(s) is/are received. Company understands that an amount equal to the total dollar amount of the ACH File will be placed on hold at the time the ACH File is received. Funds will actually be charged against the Account on the Effective Entry Date of the File and the hold will be released.

*Debit Files\*:*

Company understands that an amount equal to the total dollar amount of the ACH File will be credited to the account on the Effective Entry Date of the file.

Company also understands that any items returned in accordance with ACH guidelines will be charged to the account immediately upon receipt and Company will be notified in accordance with Section 9, "**Rejection of Entries,**" of the Agreement.

\* The CCD Corporate Debit Entry is planned to be offered at a later date and may not be available at the time of this Agreement. Contact Financial Institution or check Financial Institution's website to confirm the availability of this service.

## **SCHEDULE "D"**

### **FEES FOR SERVICES PROVIDED**

Fees may be assessed to Company by Financial Institution according to the current Commercial Fee Schedule and shall be paid at the time the ACH File is received. Commercial Fee schedule is subject to change at any time without notice.

**SCHEDULE “E”**

**AUTHORIZED USERS**

The undersigned certifies that the individuals listed below are the Authorized Users of Company for the purposes set forth in the Agreement (“Authorized Users”). These Authorized Users are authorized to act individually or jointly on behalf of the Company to transmit, add, amend or cancel Files and Entries or communicate with or provide instructions to Financial Institution concerning the matters governed by the Agreement.

Except in cases of emergency in which case Company shall provide immediate notice to Financial Institution, Company shall provide written notification as provided below to Financial Institution within two Business Days regarding any changes to the Authorized Users.

**Company-Authorized Users (Attach Additional Sheet if Necessary)**

- |    |                             |                |
|----|-----------------------------|----------------|
| 1. | _____                       | _____          |
|    | ACH Administrator/Title     | Signature      |
|    | _____                       | _____          |
|    | Phone Number (best contact) | Email Address  |
|    | _____                       | _____          |
|    | Mobile Number               | Mobile Carrier |
| 2. | _____                       | _____          |
|    | Authorized User/Title       | Signature      |
|    | _____                       | _____          |
|    | Phone Number (best contact) | Email Address  |
|    | _____                       | _____          |
|    | Mobile Number               | Mobile Carrier |
| 3. | _____                       | _____          |
|    | Authorized User/Title       | Signature      |
|    | _____                       | _____          |
|    | Phone Number (best contact) | Email Address  |
|    | _____                       | _____          |
|    | Mobile Number               | Mobile Carrier |

Except as provided in Section 19 of the Agreement, in order to add or delete Authorized Users, the ACH Administrator or the Company shall provide the Financial Institution with a revised Schedule "E" signed by the ACH Administrator or another Company representative authorized by Company to deliver the Schedule of the Authorized Users. Unless and until the Financial Institution receives such revised Schedule "E" and has had a reasonable opportunity to act on it, Financial Institution shall continue to rely on the current Schedule "E" and all instructions and information provided by the Authorized Users in that Schedule "E."

**COMPANY NAME** \_\_\_\_\_

By \_\_\_\_\_  
ACH Administrator or Authorized Company Representative/Title

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