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# Automated Clearing House (ACH)/ Remote Deposit Capture (RDC) **AGREEMENT**

**This section is to be completed by all members processing ACH and/or RDC transactions via the credit union’s software programs:**

This Agreement is being made between \_\_\_\_\_ (the “MEMBER”) and Three Rivers Federal Credit Union (the “Credit Union”).

**Check the appropriate box below:**

ACH                      RDC                      Both

**SEC codes approved to be processing (check the appropriate box below):**

ARC                      PPD                      CCD

## RECITALS

- A. The MEMBER, choosing the ACH service, wishes to initiate credit and/or debit Entries pursuant to the terms of this Agreement and the *ACH Network*, pursuant to the operating rules and guidelines (Rules) of the National Automated Clearing House Association (NACHA), as amended from time to time, along with all applicable check laws, and Credit Union is willing to act as an Originating Depository Financial Institution (ODFI) with respect to such Entries.
- B. The MEMBER, choosing the Remote Deposit Capture (RDC) service, wishes to scan checks remotely and transmit the data images to the Credit Union for processing provisional deposits into the MEMBER’S account(s) at the Credit Union pursuant to the terms of this Agreement.

NOW THEREFORE, the MEMBER and the Credit Union agree as follows:

## AGREEMENT

### General Terms

1. **Term.** This Agreement is in effect from the date signed by duly authorized officers of the MEMBER and shall remain in full force until its termination. The Credit Union reserves the right to suspend or terminate this agreement for breach of the Rules in a manner that prevents the Credit Union from complying with the Rules. Additionally, this Agreement shall be terminated upon;
  - 30 days prior written notice by either party to the other (document will be provided for this purpose) at the then current address of record,



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- Termination of the account relationship between the parties,
  - Failure of the MEMBER to comply with the terms and conditions of this Agreement,
  - Termination of the software license Agreement, or
  - Any other event which causes the software vendor to be unable to provide the Program to the Credit Union or the MEMBER.
- 2. Amendments.** From time to time the Credit Union may amend any of the terms and conditions contained in this Agreement, including and 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 the MEMBER or such later date as may be stated in the Credit Union's notice to the MEMBER. The Credit Union has the right to audit the MEMBER'S compliance with this Agreement and the Rules, at the Credit Union's discretion, but no less than annually.
  - 3. Waiver.** The Credit Union will not be deemed to have waived any rights or authority under this Agreement for failure to exercise any right or authority under this Agreement.
  - 4. ACH Rules.** The MEMBER agrees to comply with and be bound by the *Rules*. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the *Rules*. In the event the MEMBER violates any of the applicable *Rules* and NACHA imposes a fine on the Credit Union because of the MEMBER's violation, the Credit Union may charge the fine to the MEMBER. The MEMBER acknowledges receipt of or has access to a copy of the Rules, or may contact the Credit Union to be directed on how to obtain a copy of the Rules.
  - 5. Check Law.** MEMBER agrees to comply with all state and/or federal laws, rules and regulations affecting the use of checks, drafts and ACH transactions, including but not limited to the rules and procedural guidelines established by the Federal Trade Commission (FTC), the National Automated Clearing House Association (NACHA), Check 21, all other state and federal laws governing electronic payments.
  - 6. U.S. Law.** It shall be the responsibility of the MEMBER that the origination of ACH and CHECK PROCESSING transactions complies with U.S. Law and the Office of Foreign Assets Control.
  - 7. Governing Law.** This Agreement shall be construed in accordance with and governed by the laws of the state of Indiana (except to the extent Federal law governs the copyrights and trademarks of the software provider and its successors or assigns) and the Rules.
  - 8. Assignment.** The MEMBER may not assign any of its rights, duties or obligations under this Agreement. The Credit Union may assign or delegate certain rights and responsibilities under this Agreement.
  - 9. Security Procedures.** The MEMBER and the Credit Union shall comply with the security procedure requirements described in the attached Schedule [A] with respect to Entries transmitted by the MEMBER to the Credit Union.
  - 10. Entire Agreement; Severability.** This Agreement together with all exhibits, schedules and attachments hereto, the Account Agreement and the Rules (as incorporated herein) represent the entire agreement and understanding of the parties. If any portion of this Agreement is found to be unenforceable, all remaining portions shall remain in full force and effect. In the event of any inconsistency or conflict between the terms of this Agreement and any present or future statute, regulation or governmental policy to which the Credit Union is subject to 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 Credit Union shall incur no liability to the MEMBER as a result of such violation or amendment.



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### **11. Processing, Transmittal and Settlement by Credit Union.**

- Except as provided in Section 9, the Credit Union shall (i) process Entries received from the MEMBER that conform with the file specifications set forth in the *Rules*, (ii) transmit such Entries as an Originating Depository Financial Institution to the Federal Reserve (the “ACH Operator”) and from the Federal Reserve (the “ACH Operator”), and (iii) settle for such Entries as provided under the *Rules*.
- The Credit Union shall transmit such Entries to the ACH Operator by the deadlines set forth in the attached Schedule [B] [one business day] prior to the Settlement date shown in such Entries, provided (i) such Entries are received by the Credit Union’s related cut-off times set forth in attached Schedule [B] on a business day, (ii) the Settlement date is at least 1 day after such business day, and (iii) the ACH Operator is open for business on such business day.
- If any of the requirements of the clauses of Section 11 are not met, the Credit Union shall use reasonable efforts to transmit such Entries to the ACH Operator by the next deposit deadline on which the ACH Operator is open for business.

**12. On-Us Entries.** Except as provided in Section 11, in the case of an Entry received for credit to an account maintained with the Credit Union (an “On-Us Entry”), the Credit Union shall credit the Receiver’s account in the amount of such Entry on the Settlement date contained in such Entry, provided the requirements set forth in this Agreement are met. If either of those requirements are not met, the Credit Union shall use reasonable efforts to credit the Receiver’s account on the next business day following such Settlement date.

**13. Rejection of Entries.** The Credit Union shall reject any Entry which does not comply with the requirements of Sections 1 through 5, or which contains a Settlement date more than 1 day after the business day such Entry is received by the Credit Union. The Credit Union shall have the right to reject an on-us Entry for any reason for which an Entry may be returned under the *Rules*. The Credit Union shall have the right to reject any Entry if the MEMBER has failed to comply with its account balance obligations. The Credit Union shall notify the MEMBER by secure email of such a rejection no later than the business day such Entry would otherwise have been transmitted by the Credit Union to the ACH Operator, or in the case of an on-us Entry, its Settlement date.

The Credit Union shall have no liability to the MEMBER by reason of the rejection of any such Entry or the fact that such notice is not given at an earlier time than that provided for herein.

**14. Entry Cancellation or Amendment by MEMBER.** The MEMBER shall have no right to the cancellation or amendment of any Entry after its receipt by the Credit Union. The Credit Union shall, however, use reasonable efforts to act on a request by the MEMBER 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 a Receiver’s account.

**15. Notification of Returned Entries.** The MEMBER shall be notified by secure email directly from the Federal Reserve, via its Fed Payments Reporter service, regarding the receipt of a returned Entry/dishonored return from the ACH Operator no later than two banking days following the settlement date of the return. For any return reasons other than insufficient funds, uncollected or frozen, the MEMBER agrees to refrain from reinitiating any further Entries until obtaining updated information from their indirect customer/employee.

**16. Notifications of Change.** The MEMBER shall be notified of all Notifications of Change/Refused Notifications of Change from the ACH Operator related to Entries transmitted by the MEMBER by secure email via the Federal Reserve’s FED Payments Reporter no later than two banking days from the settlement date of the Notification, and the MEMBER must process such notifications of change the earlier of six banking days from this notice, or prior to the next Entry being transmitted to/from the Receiver’s account.



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- 17. Reinitiation of Entries.** The MEMBER may not reinitiate Entries except as prescribed by the *Rules*.
- 18. Entry Offsets.** The MEMBER shall pay the Credit Union the amount of each Entry transmitted by the Credit Union pursuant to this Agreement on the Settlement Date with respect to such Entry as the Credit Union, at its discretion, may determine, and the amount of each on-us Entry on the Settlement date of such Entry as the Credit Union, at its discretion, may determine.
- 19. Payment for Services.** MEMBER agrees to pay the fees for access to and use of the software Program at the rates specified in the attached ODFI fee schedule D. The fees are subject to change at any time during this Agreement after providing 30 days prior notice in writing to the MEMBER. The Credit Union may deduct all fees due from any account the MEMBER holds at the Credit Union. 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 the services provided for herein, and any fees or charges provided for in the account agreement between the Credit Union and the MEMBER with respect to the account.
- 20. The MEMBER'S Account.** The MEMBER shall, at all times, maintain a balance of available funds in the account sufficient to cover its payment obligations under this Agreement. The Credit Union may, without prior notice or demand, obtain payment of any amount due and payable to it under this Agreement by debiting the account(s) of the MEMBER identified in the attached Schedule C, and shall credit the account for any amount received by the Credit Union by reason of the return of an Entry transmitted by the Credit Union for which the Credit Union has previously received payment from the MEMBER. Such debits/credits shall be made as of the day of such receipt by the Credit Union.
- In the event there are not sufficient available funds in the account to cover the MEMBER'S obligations under this Agreement, the MEMBER agrees that the Credit Union may debit any account maintained by the MEMBER with the Credit Union or that the Credit Union may set off against any amount it owes to the MEMBER, in order to obtain payment of the MEMBER'S obligations under this Agreement.
- 21. Settlement Reserve.** The MEMBER may be, at the Credit Union'S discretion, required to maintain a reserve (Settlement Reserve) of an amount to be solely determined by the Credit Union. The MEMBER hereby acknowledges and agrees that any Settlement Reserve will be deposited into the Credit Union account for exclusive use by the Credit Union for purposes of offsetting any MEMBER obligations under this Agreement. The MEMBER grants the Credit Union a security interest in the Settlement Reserve so that they may enforce any obligation owed by the MEMBER under this Agreement without notice or demand. MEMBER'S obligation to maintain a Settlement Reserve shall survive the termination of this Agreement for the duration of the termination period, during which time the Credit Union'S security interest shall continue.
- 22. Periodic Statement/Account Reconciliation.** All transactions which result in a debit or credit to the account(s) used for the service(s) will be reflected on the MEMBER'S monthly account statement. The MEMBER will notify the Credit Union within 30 days following the statements being mailed by the Credit Union, of any discrepancies between the account statements and the MEMBER'S internal transaction records that were initiated through the ACH and/or RDC service. Failure of the MEMBER to notify the Credit Union within said time period of any such discrepancies will preclude the MEMBER from asserting any claims for damages or other liabilities and losses against the Credit Union by reason of such discrepancies.
- 23. Use of Software Program.** The Credit Union hereby grants to the Member a non-transferrable and non-exclusive license for use of the Credit Union'S software program, subject to the terms and conditions set forth in this Agreement and the Software Licensing Agreement, incorporated herein.



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- The Member acknowledges and agrees that the software program is confidential, proprietary and the sole property of the Credit Union. They agree not to transfer, distribute, copy, reverse engineer, modify or alter the software program. The Member understands the confidential and proprietary nature of the Credit Union's software program and agrees that the Credit Union shall be entitled to pursue any remedy for the failure to keep this information confidential, including injunctive and/or monetary relief.
- The Credit Union may materially redesign, modify, update or upgrade the software program at any time without prior notice.
- The Member acknowledges and agrees that the Credit Union has no control over the conditions under which the Member uses the software program, and does not and cannot warranty the results obtained by such use. **THE CREDIT UNION DISCLAIMS ALL WARRANTIES, EXPRESSED OR IMPLIED, RELATED TO THE PROCESSING AND/OR THE CREDIT UNION'S SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANT ABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE CREDIT UNION DOES NOT WARRANT THAT OPERATION OF THE SOFTWARE PROGRAM WILL BE UNINTERRUPTED, ERROR-FREE OR COMPATIBLE WITH THE MEMBER'S SYSTEMS. THE MEMBER ACKNOWLEDGES THE CREDIT UNION'S SOFTWARE PROGRAM IS PROVIDED FOR USE BY THE MEMBERS "AS IS".**

### **24. Liability; Limitations on Liability; Indemnity.**

- The Credit Union 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. The Credit Union shall not be responsible for the MEMBER's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any Entry received from the MEMBER) or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, any Receiver or Receiving Depository Financial Institution (RDFI) (including without limitation the return of an Entry by such Receiver or RDFI, and no such person shall be deemed the Credit Union's agent. MEMBER agrees to indemnify the Credit Union against any loss, liability or expense (including attorneys' fees and expenses) resulting from any claim of any person that the Credit Union is responsible for, any act of omission by the MEMBER or any other person or entity described in this Section.
- In no event shall the Credit Union be liable for any consequential, special punitive or indirect loss or damage that the MEMBER may incur or suffer in connection with this Agreement, including losses or damages from subsequent wrongful dishonor resulting from the Credit Union's acts or omissions pursuant to this Agreement.
- The Credit Union 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 the Credit Union's control. In addition, the Credit Union shall be excused from failing to transmit or delay in transmitting an Entry if such transmittal would result in Credit Union's having exceeded any limitation upon its intra-day net funds position established pursuant to Federal Reserve guidelines or if the Credit Union is otherwise violating any provision of any risk control policy of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.
- The Credit Union'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 of New York for the period involved. (At the Credit Union's option, payment of such interest may be made by crediting the Account from any claim of any person that the Credit Union is responsible, for any act or omission of the MEMBER or any other person described in Section 15.

### **25. Compliance with the Security Procedures.** The Member and the Credit Union shall comply with the security procedures



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described in the attached Schedule [A] with respect to Entries transmitted by the Member to the Credit Union.

- If an Entry (or a request for cancellation or amendment of an Entry) received by the Credit Union purports to have been transmitted or authorized by the MEMBER, it will be deemed effective as the MEMBER's Entry and the MEMBER shall be obligated to pay the Credit Union the amount of such Entry even though the Entry was not authorized by the MEMBER, provided the Credit Union acted in compliance with the security procedures referenced in Schedule [A].
- Member acknowledges the purpose of the security procedures is for the verification of authenticity and not to detect transmission or content errors of any Entry.

**26. Exposure Limits.** The total dollar amount of Entries transmitted, frequency of origination and payment application (debits or credits) originated by MEMBER and submitted to the Credit Union shall comply with limits set forth in the attached Schedule [F].

**27. Reviews and Audits.** Upon reasonable notice to the MEMBER, during non-peak business hours, the Credit Union will have the right to inspect document scanning and retention location; retention method; MEMBER's technology infrastructure; security policies, procedures, and controls, for the purpose of validating the MEMBER's ability to carry out its duties under this Agreement. The Credit Union shall have the right to inspect the MEMBER's financial statements and operating reports on a periodic basis, as it deems necessary, and mandate specific internal controls if necessary. The Credit Union reserves the right to perform such an audit at our discretion under the ACH Rules.

**28. Authorization.** The MEMBER will provide the Credit Union with properly executed authorizations, in attached Schedule [E], identifying by name and title the officers, who are permitted to sign this Agreement and perform the obligations of the MEMBER under this Agreement. In the absence of such authorizations, MEMBER agrees that the individuals authorized to sign on MEMBER's deposit account are also authorized to sign this Agreement and perform the obligations of the MEMBER under this Agreement. From time to time hereafter, the MEMBER may identify other persons who are authorized to provide instructions or directions to the Credit Union, to sign any document or instruction on behalf of the MEMBER relating to this Agreement, and to take any action on behalf of the Member, provided, however, that the Credit Union may rely upon, as authentic and duly authorized, any written or other communication from any person purporting to be an officer of or other representative of the Member, regardless of whether the Member shall have provided to the Credit Union any evidence of such person's authority.

**29. Notices, Instructions, Etc.**

- Except as otherwise expressly provided herein, the Credit Union 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.
- The Credit Union 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, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in Schedule [E] attached hereto. The MEMBER may add or delete any Authorized Representative by written notice to the Credit Union signed by an authorized signor other than the representative being added or deleted. Such notice shall be effective on the second (2<sup>nd</sup>) business day following the day of the Credit Union's receipt.

**30. Third Parties.** The MEMBER shall assume full liability and responsibility for any action made by any third-party processor used by the MEMBER at its discretion to initiate Entries on its behalf. This includes granting access to the software programs provided by the Credit Union.



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### CONSUMER PAYMENTS

In addition to the General Terms of this Agreement, the following provisions apply specifically to consumer PPD and ARC ACH Entries.

- 31. Authorization.** The MEMBER will obtain written authorization for consumer Entries in accordance with the *Rules* and U.S. Law. The MEMBER will retain a record of the authorization for a period of two (2) years following the Settlement Date of the last consumer Entry.
- 32. Representations and Agreements; Indemnity.** The MEMBER agrees that:
- each person shown as the Receiver on an Entry received by the Credit Union from the MEMBER has authorized the initiation of such Entry and the debiting/crediting of its account in the amount and on the Settlement Date shown on such Entry;
  - such authorization is operative at the time of transmittal or debiting/crediting by the Credit Union as provided herein;
  - Entries transmitted to the Credit Union by the MEMBER are limited to those types of Entries set forth in this Agreement;
  - the MEMBER shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, and;
  - the 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 specifically acknowledges that if such settlement is not received, the RDFI shall be entitled to a refund from the Receiver of the amount credited and the MEMBER shall not be deemed to have paid the Receiver. The MEMBER shall indemnify the Credit Union against any loss liability or expense (including attorneys' fees and expenses) resulting from any breach of any of the foregoing agreements.
- 33. Submission of Entries by MEMBER.** The MEMBER shall submit consumer debit/credit Entries to the Credit Union in compliance with the formatting and other requirements set forth in the Rules and the attached Schedule [A].
- 34. Pre-notifications.** The MEMBER will send pre-notifications five (5) business days prior to initiating the first monetary Entry to/from a Receiver's account. Once the MEMBER has received notice that any such Entry has been rejected by the RDFI, the MEMBER agrees to refrain from initiating any further Entries to/from that Receiver's account until updated account information has been obtained from the Receiver.
- 35. Reversing Entries.** The MEMBER shall notify the Receiver that a reversing Entry has been transmitted to their account no later than the settlement date of the reversing Entry. This notification may be made by the MEMBER's method of choice (fax, verbal, telephone, physical notice, etc.)
- 36. Stop Payment of ACH Entries.** Neither the MEMBER nor the Credit Union will have the right to adjust or stop payment on any Entry after it has been processed by ACH. If either the MEMBER or the Credit Union asserts that an Entry has been erroneously initiated, a reversing or adjustment Entry may be initiated by the MEMBER, as set forth in the Rules. In addition, either the MEMBER, or the Credit Union on their behalf, may make an oral or written request to the RDFI to stop payment of, or to adjust, an Entry which has been or is asserted by the MEMBER or the Credit Union to have



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been erroneously initiated, and the RDFI may elect whether or not to honor such a request. The Credit Union will have no obligation to the MEMBER with respect to any such request which is not honored.

**37. Debits not as Authorized.** If a debit Entry is returned unauthorized within sixty (60) calendar days of settlement date by the Recipient, the MEMBER's account will be debited for the transaction amount and may be charged a separate returned item fee.

**38. 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 to the RDFI might be made by the RDFI (or by the Credit Union in the case of an On-Us Entry) solely on the basis of the account number 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 Credit Union is not excused in such circumstances.

**39. Compliance with the Rules; Non-Disclosure and Confidentiality.** The MEMBER agrees both (i) to comply with and (ii) cooperate and assist the Credit Union and its vendors in and deliver to the Credit Union all such instruments, as the Credit Union may from time to time reasonably deem necessary. MEMBER shall not disclose to any third party other than the Credit Union, or any agent of MEMBER for the purpose of assisting the MEMBER in completing a transaction, or as specifically required by law, any account information or other personal information. MEMBER will, in an area limited to select personnel prior to disposal, destroy in a manner rendering data unreadable, all material containing account information, after it has been retained for a period specified by the Rules. The Credit Union and MEMBER both agree to remain in compliance with the current rules and regulations of the National Automated Clearing House Association (NACHA) and/or all regional payment alliances associated with NACHA (the NACHA Rules) applicable to it at all times during the terms of this Agreement.

**40. Unauthorized Access; Security Procedures.** The MEMBER shall be solely responsible for protecting against unauthorized access to the software program and any and all losses and damages that arise from any unauthorized access to the software program. The MEMBER shall establish commercially reasonable physical security, passwords and other security procedures necessary to ensure the confidentiality of access features. The MEMBER shall make such procedures and security features known only to those authorized representatives of its business who will use the software program. The Credit Union shall have no obligation, liability or control, either directly or indirectly, over said procedures or the failure of MEMBER to maintain said procedures. The MEMBER shall be solely responsible for designating its authorized representatives and disclosing the identity of said representatives, and all changes thereof, to the Credit Union. The Credit Union however, will not be responsible for verifying the authenticity of any person claiming to be a representative of the MEMBER or the authenticity of any instruction, direction or information provided to any said person. Any instructions, directions or other information provided by the MEMBER, or any representative of the MEMBER, under the services shall be deemed to have been authorized by the MEMBER. The Credit Union will be indemnified and held harmless by the MEMBER for acting upon any such direction, instruction or information.

- The Credit Union will provide the MEMBER with their initial user name and password. MEMBER may appoint an individual as Administrator with the authority to; determine who will be authorized to use the services; establish separate passwords for each user; establish limits on each user's authority to access information and conduct transactions. MEMBER is responsible for the actions of its Administrator, the authority they give others to act on their behalf, and the actions of the persons designated by the Administrator to use the Credit Union's services. MEMBER agrees to : take responsible steps to safeguard the confidentiality of all passwords; limit access to persons who have a business need to know such information; closely and regularly monitor the activities of employees who access the Credit Union's services; prohibit its employees and agents from initiating Entries without proper supervision and adequate controls; immediately remove users they deem no longer authorized to use the services.





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- MEMBER understands that the use of passwords and the Credit Union's service instructions is confidential and agrees to assume all risks of accidental disclosure or inadvertent use by any party whatsoever, whether such disclosure of use are due to MEMBER's negligence or are deliberate acts. MEMBER acknowledges that no person from the Credit Union will ever ask for any passwords and that the Credit Union employees do not need and should not ask for passwords.
- MEMBER will change their passwords periodically and whenever anyone who has had access to a password is no longer employed or authorized by it to use the Credit Union service. The Credit Union may require MEMBER to change their passwords at any time. The Credit Union may deny access to this service without prior notice if it is unable to confirm (to its satisfaction) any person's authority to access the service or if the Credit Union believes such action is necessary for security reasons.
- MEMBER will immediately report to the Credit Union any security incidents.

**41. Indemnification.** All disputes between the MEMBER and any Indirect Customer relating to any debit/credit transaction shall be settled between the MEMBER and this customer. The MEMBER agrees to indemnify and hold the Credit Union harmless from any claim, liability, loss, or expenditure relating to any such transaction or from MEMBER's breach of any if its obligations under this Agreement. The Credit Union retains the right to offset the MEMBER's account for any amount of damages incurred by the Credit Union from the MEMBER's actions.

**42. LIMITATIONS OF LIABILITY.** IN NO EVENT SHALL THE CREDIT UNION BE LIABLE TO MEMBER FOR ANY DAMAGES, INCLUDING LOST PROFITS, LOST SAVINGS OR OTHER DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE PROGRAM AND DOCUMENTATION, OR FOR ANY CLAIM BY ANOTHER PARTY. THE CREDIT UNION'S DUTIES AND RESPONSIBILITIES IN CONNECTION WITH ACH TRANSACTIONS AND CHECK 21 TRANSACTIONS ARE LIMITED TO THOSE DESCRIBED IN THIS AGREEMENT. THE CREDIT UNION WILL BE DEEMED TO HAVE EXERCISED ORDINARY CARE AND TO HAVE ACTED REASONABLY IF THE CREDIT UNION HAS ACTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND WILL BE LIABLE FOR LOSS SUSTAINED BY THE MEMBER ONLY TO THE EXTENT SUCH LOSS IS CAUSED BY THE CREDIT UNION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE CREDIT UNION WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE CREDIT UNION'S ACT OR OMISSION. THE CREDIT UNION WILL HAVE NO LIABILITY FOR ANY LOSS OR DAMAGE: (i) RELATED TO THE DISHONESTY OF THE MEMBER'S EMPLOYEES, OFFICERS OR AGENTS; (ii) RESULTING FROM ANY RECEIVING CREDIT UNION'S FAILURE TO ACCEPT ANY ACH TRANSACTIONS OR CHECK 21 TRANSACTIONS; OR (iii) RESULTING FROM ANY DELAY IN THE PERFORMANCE OF THIS AGREEMENT, WHICH IS CAUSED BY AN ACT OF GOD, FIRE OR OTHER CASUALTY, ELECTRICAL OR COMPUTER FAILURE, DELAYS OR FAILURE TO ACT BY ANY CARRIER, MEDIUM OR AGENT OPERATING BETWEEN THE CREDIT UNION AND THE MEMBER OR BETWEEN THE CREDIT UNION AND THIRD PARTIES OR ANY OTHER CONDITION OUTSIDE THE CREDIT UNION'S CONTROL. NO THIRD PARTY WILL HAVE RIGHTS OR CLAIMS AGAINST THE CREDIT UNION UNDER THIS AGREEMENT. THE TERMS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

**\*\**(If processing ACH only, skip to page 13 of agreement for signatures and schedules)***

### **IN ADDITION TO THE GENERAL TERMS OF THIS AGREEMENT, THE FOLLOWING PROVISIONS APPLY TO MEMBERS PROCESSING CHECKS VIA REMOTE DEPOSIT CAPTURE USING OUR SOFTWARE PROVIDER:**

**43. RDC Service.** The RDC service, provided by the Credit Union, requires the use of a check scanning device (the scanner), access to a browser based software program, and all related materials and documentation (collectively herein the "Program"). The Program allows the MEMBER to conduct certain check related activities, with checks deemed eligible under Check 21, with the Credit Union electronically. The checks will be scanned into the software



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program by the MEMBER, converted into legal images, then, following the Credit Union’s outlined procedures, picked up by the Credit Union and transmitted for electronic processing.

- The indirect customers’ accounts may be debited as an ACH transaction, rather than the check clearing system, dependent on the dollar amount (under \$25,000) and type of check (personal or business). As such, the indirect customer will not receive their original cancelled paper checks through the check clearing system.
- These paper checks will either be stamped processed by the scanner or physically stamped by the MEMBER and retained for a period according to the Rules before being destroyed by a commercially reasonable method.
- The MEMBER will be able to access images directly from their site for a period of 25 months.
- The images will remain with the software provider for a period of seven years. Should the MEMBER or indirect customer need a check researched, the software provider will supply the images from its archive during the remaining retention period.
- MEMBER service and technical support will be provided by the software provider. Network connectivity is the responsibility of the MEMBER.

**44. Use of Scanner Equipment by MEMBER.** The Credit Union is not responsible for any loss, damage or injury resulting from (i) an interruption in MEMBER’s electrical power or phone service; (ii) the disconnecting of MEMBER’s phone line by the MEMBER’s local phone carrier or from deficiencies in MEMBER’s line quality; or (iii) any defect or malfunction of the scanner or phone line. **\*\*Any technical support needed for scanner will be handled directly between the MEMBER and either the software provider or the scanner manufacturer.**

**45. Use and Return of Scanner.** If the Credit Union purchases a scanner on the MEMBER’s behalf, the MEMBER must exercise reasonable and customary use and care of such equipment, with the understanding that at such time this Agreement is terminated, either by the MEMBER or by the Credit Union, within a period of 365 days, the scanner and all peripherals must be returned within ten (10) business days to the Credit Union in working condition, less normal wear and tear. At this time the MEMBER may, at the Credit Union’s discretion, be charged a depreciation fee, calculated by the Finance department, from the MEMBER’s account.

IN WITNESS WHEREOF, the following parties have executed and agree to be bound by this **Scanner** Agreement by their duly authorized officers:

THREE RIVERS FCU \_\_\_\_\_

By \_\_\_\_\_

MEMBER \_\_\_\_\_

By \_\_\_\_\_

This Agreement has been executed on



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## Automated Clearing House (ACH)/ Remote Deposit Capture (RDC) **AGREEMENT**

- 46. Software setup and scanner installation.** The Credit Union will set up the software and install the scanner on site with the MEMBER, going over all necessary functionality, file transmissions, basic scanner care, as well as options available to the users, list of reports, image retrieval steps and answer any questions the MEMBER has at that time. Credit Union contact information will be provided for ongoing questions and support. Ongoing maintenance to the system and any functionality changes will be communicated to the MEMBER at such time the Credit Union becomes aware of them. The MEMBER will be responsible for regular cleaning and any maintenance to the scanner, including but not limited to the ordering and purchasing of ink cartridges for physical endorsements.
- 47. Processing.** The Credit Union may process checks submitted by the MEMBER through the RDC service in accordance with the Credit Union's internal procedures and all state and federal laws during any business day, subject to the cutoff time as stated in Schedule [B]. Images that are transmitted for deposit are not subject to the availability requirements of Regulation CC and therefore may be delayed. See Schedule [B] for Funds Availability Statement.
- 48. MEMBER's Obligations to indirect customers.** As the MEMBER will be receiving the indirect customer's paper checks and creating images, and as the MEMBER will be retaining and then destroying the indirect customer's paper checks, the MEMBER must comply with the following responsibilities:
- **Check Requirements.** Any image of a check transmitted through the RDC service must provide all of the information on the front and back of the check accurately and legibly. The MEMBER must endorse each original check with the restrictive endorsement either before scanning the check or, if the scanner in use has physical endorsements, during scanning, marking the check "For Deposit only". The paper checks will remain with the MEMBER for a period of no greater than 30 days before being destroyed. Checks must be secured in a manner deemed commercially reasonable during the retention period and must be properly destroyed. The Credit Union shall have no liability to MEMBER for any loss, cost or damage related to or arising from MEMBER's retention of the paper checks, the method of securing such checks, the destruction of such checks or the method of destruction of such checks chosen by the MEMBER. It is the MEMBER's responsibility to back up any data stored on the system.
  - **Image Quality.** Images transmitted to the Credit Union must be legible. The image quality of the items must comply with the requirements established from time to time by the Federal Reserve Board, or any other regulatory agency, clearing house or association. The Credit Union reserves the right in its sole discretion, to refuse the acceptance of checks that do not meet its image quality requirements.
- 49. Retain Data.** The MEMBER shall retain data on file adequate to permit remaking of Entries for five (5) business days following the date of their transmittal by the Credit Union as provided here, and shall provide such data to the Credit Union upon its request. The MEMBER shall retain a reproducible and legible copy of the source document used to initiate a check entry for two (2) years from the Settlement Date, and will provide it to the ODFI upon request, in a timeframe sufficient for the ODFI to provide such copy to the RDFI within ten (10) banking days, in compliance with the Rules.
- 50. Notice of Provisional Credit.** In the case of any Credit Entry subject to Article 4A of the Uniform Commercial Code, credit given by the RDFI to the Recipient with respect to such an Entry is provisional until the RDFI has received final settlement through the Federal Reserve Bank. If such settlement or payment is not received, the RDFI will be entitled to a refund from the Recipient of the amount credited, and the MEMBER will not be deemed to have paid the Recipient the amount of the Entry.
- 51. Reversing Entries.** If the MEMBER discovers that any Entry it has initiated was in error, the MEMBER will notify the Credit Union immediately. The Credit Union will then notify the MEMBER as to whether the transmission of the file or the Entry for the ACH or Check21 transaction has occurred. The MEMBER will then have the sole right and responsibility to initiate a Reversing Entry in accordance with the Rules.



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**52. RDC Processed as an ACH.** The MEMBER acknowledges that, once the paper checks are processed with the scanner and become images, the transactions may be processed by the Credit Union and entered into the ACH network when applicable. The transaction representative of the image (then Entry or Entries) will be completed as an ACH transaction. Without limitation of any other provision of this Agreement, the Rules will govern the acceptance and liability for all ACH transfer requests initiated in connection with the services. The Agreement will only govern those ACH transfer requests initiated through the services.

**53. Business Continuity.** At certain times, the RDC service may not be available, due to system maintenance or circumstances beyond the Credit Union's control. When the RDC service is unavailable, and deposits cannot be made electronically through RDC technology, the MEMBER may physically bring checks to the Credit Union for deposit. If MEMBER chooses an alternate means of depositing their checks, a per item charge may be incurred as outlined in their account agreement. The Credit Union is not responsible for providing an alternate means of remote deposit when the RDC service is unavailable.

**54. MEMBER Representatives and Warranties.** With respect to each and every check that the MEMBER scans into an image using the Remote Deposit Capture system, the MEMBER represents and warrants to the Credit Union that:

- each indirect customer shown as the payer on an image received by the Credit Union from the MEMBER was from an indirect customer who was properly notified that the check may be converted to an ACH Entry and did not opt out of the program;
- only eligible items will be transmitted;
- images will meet the image quality standards;
- the MEMBER will not present or attempt to present the original check or a substitute check deposited into the RDC system by an additional means, or allow any other person or entity to represent or attempt to represent the check by any other means;
- the checks deposited have not been altered; and
- the MEMBER assumes responsibility for any paper check that is transmitted and for any reason is not paid.

**55. DISCLAIMER OF WARRANTY.** NO WARRANTIES WITH RESPECT TO THE SCANNER AND/OR THE PROGRAM ARE MADE BY THE CREDIT UNION NOR DOES THE CREDIT UNION WARRANT THAT THE SCANNER AND THE PROGRAM WILL MEET SPECIFIC REQUIREMENTS OF THE MEMBER. THE CREDIT UNION MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, WITH RESPECT TO THE USE OF THE SCANNER AND/OR THE PROGRAM. THE CREDIT UNION DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MEMBER'S ABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**56. The Credit Union's Liability for Failure to Complete Transactions.** The Credit Union will process and complete all transfers (to and from eligible accounts) properly initiated through the remote deposit capture system in accordance with the terms on the image and the terms of this Agreement. If the Credit Union does not complete an ACH transaction or Check 21 transaction on time or in the correct amount in accordance with terms on the image and under the terms of this Agreement, the Credit Union's liability for MEMBER's losses and damages will be limited to those directly and proximately caused by the Credit Union's failure, not to include indirect, consequential, special or exemplary damages. Further, the Credit Union will not be liable if:



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- The scanner or the program is not working properly through no fault of the Credit Union;
- The depository institution of the MEMBER's indirect customer mishandles or delays handling ACH or Check 21 transactions initiated by the Credit Union; or
- There is an error or alteration on the paper check.

**57. Indemnification.** The MEMBER will defend, indemnify and hold harmless the Credit Union against and in respect to any and all losses, liabilities, expenses and damages, including consequential, special and punitive damages, directly or indirectly resulting from: (i) the processing of any request received by the Credit Union under the remote deposit capture service system; (ii) any breach of the provisions of this Agreement or the Rules; (iii) any dispute between the MEMBER and any third party in connection with the use of the remote deposit capture service system; (iv) any breach of the MEMBER's representations for any transaction submitted by the MEMBER described in this agreement; (v) any loss or expenditure which results from any transaction submitted by the MEMBER caused by the Indirect Customer's inability to fund the transaction; and (vi) any and all actions, suits, proceedings, claims, demands, judgements, costs and expenses (including attorney's fees) incident to the foregoing. The terms of this section shall survive termination of this Agreement

IN WITNESS WHEREOF, the following parties have executed and agree to be bound by this ACH/RDC Agreement by their duly authorized officers:

THREE RIVERS FCU \_\_\_\_\_

By \_\_\_\_\_

MEMBER \_\_\_\_\_

By \_\_\_\_\_

This Agreement has been executed on



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# Automated Clearing House (ACH)/ Remote Deposit Capture (RDC) **AGREEMENT**

## **SCHEDULE [A]** ACH/RDC TRANSMITTAL/SECURITY PROCEDURES

### **ACH/RDC Transmissions**

- Imported files must be in valid NACHA file format as specified in the Rules in order to be processed by the Credit Union, if not entered directly into the program or online banking itself.
- File submissions will adhere to the processing schedules detailed in Schedule [B]
- The MEMBER will use Out of Band Authentication (Secure email, SMS Code, or fax) for file release totals.
- In the event of a discrepancy between the file totals and MEMBER verification totals, the Credit Union will attempt to contact the authorized representatives. If no authorized representatives are available for resolution, the file will not be processed until an authorized representative can be reached on the next business day.

### **Security Procedures**

- The Credit Union is entitled to rely solely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative, and any such communication is deemed to have been signed by such person.
- The Credit Union will not be responsible for verifying the authenticity of any person claiming to be an Authorized Representative of the MEMBER or the authenticity of any instruction, direction or information provided.
- The Credit Union may, but is under no obligation to, hold suspicious files or files that do not adhere to established security, violate the terms of this Agreement or the *Rules*, or for other reasons. Such files will require additional authorization by an Authorized Representative before transmission to the ACH Operator.
- The Credit Union requires the following minimum levels of network and computer security for all Originators detailed below:
- Reliable, current and fully patched security suites including, at minimum, anti-virus, anti-malware, anti-botnet, and anti-spyware.
- Hardware and software firewalls.
- Process to patch systems timely.
- Windows 10 or later operating system.
- Internet Explorer 10 or later browser.
- Written security policy and procedures designed to protect MEMBER's network from unauthorized access (i.e. data breach) and avoid disclosing protected information (i.e. account numbers, social security numbers, etc.).
- Regular employee training.
- Assurances that the software program will not be used on a public/unsecured network.
- \*\*The MEMBER will supply evidence to the Credit Union of the above security requirements within five (5) business days of such request.

### **Account Security:** the Credit Union requires the following account security:

- The MEMBER will only allow access to the Credit Union's online banking and sub-licensed software program to employees authorized to conduct ACH/RDC transactions on its behalf.
- The MEMBER will keep all confidential account information secured by either physical or electronic means, for both the MEMBER and its indirect customers.



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## Automated Clearing House (ACH)/ Remote Deposit Capture (RDC) **AGREEMENT**

### **SCHEDULE [B]** FUNDS AVAILABILITY SCHEDULE

If the ACH file, intended to be effective for the next business day, is received by the cutoff time on a business day, then the file will be processed as requested. If the ACH file is attempted to be released after the posted cutoff time, the system will not allow the file to be released until a later date is selected.

If the Remote Deposit file is received by the cutoff time on a business day, the credit will be posted the same business day. If the remote deposit file is not received by the posted cutoff times on a business day or if the remote deposit file is submitted on a non-business day, the credit will be posted on the next business day. Business day is defined as Monday through Friday, excluding observed Federal holidays.

Availability may be delayed as deemed necessary by the Credit Union.

#### **ACH DEADLINE**

Cutoff time: 12 pm (EST)

- This is for next day settlement

***\*\*No ACH files may be submitted after this deadline for the next business day***

#### **RDC DEADLINE**

Cutoff times: 10 am and 2 pm

- To receive credit same day
- **ARC Postings** run automatically at 12:30pm and 3:30 pm daily
- **RD posting** runs at 2:45 pm daily

***\*\*Any RDC files submitted after these deadlines will be processed and credited on the next business day***



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**SCHEDULE [C]**  
ACCOUNT AGREEMENT

This schedule identifies the business account(s) to/from which settlement should occur for origination or return of Entries.

**ACCOUNTS**

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**SCHEDULE [D]**  
ODFI FEES SCHEDULE

**ACH Fees (no RDC functionality):** \$100 set up fee

- \$15.00/month for **Community checking**;
- \$20.00/month for Essential or Plus checking

**Remote Deposit Capture (ACH functionality and archival of all checks included in cost):** \$100 set up fee

**\*\*The costs below are dependent on type of business account**

- \$40.00/month **Community checking** (does not include cost of scanner)
- \$50.00/month **Essential** or **Plus checking** (does not include cost of scanner)
  - There are no per check or per item fees under this agreement



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**SCHEDULE [E]**  
AUTHORIZED SIGNORS

All ACH/RDC transaction files must be delivered independently of secure email verification from an authorized agent of the MEMBER.

**BUSINESS LEGAL NAME:** \_\_\_\_\_

**PRIMARY CHECKING ACCOUNT:** \_\_\_\_\_

**TAX ID NUMBER (TIN):** \_\_\_\_\_

The signatures contained below are the signatures of employees that have been vested by our Board of Directors or equivalent with full authority to perform file transmissions used in conjunction with the origination of ACH/RDC files. The number of signatures required by our MEMBER to submit a transaction file for processing:

NAME	VALID EMAIL ADDRESS(ES)	SIGNATURE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**AUTHORIZED SIGNATURE:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_



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**SCHEDULE [F]**  
EXPOSURE LIMITS

**CREDIT ORIGINATIONS**

Maximum File Limit: \_\_\_\_\_

Maximum Single Entry Limit: \_\_\_\_\_

Maximum Frequency (WKLY/BI-WKLY/MONTHLY): \_\_\_\_\_

**DEBIT ORIGINATIONS**

Maximum File Dollar Limit: \_\_\_\_\_

Maximum Single Entry Limit: \_\_\_\_\_

Maximum Frequency: \_\_\_\_\_

Maximum Net Settlement Limit: \_\_\_\_\_