



## AUTOMATED CLEARING HOUSE AGREEMENT

This Agreement dated the 1st day of September, 2016 is by and between Manitowoc Public Utilities (the “Company”) and BANK FIRST NATIONAL (“Financial Institution”).

The Company has requested that the Financial Institution permit it to initiate debit and credit entries to accounts maintained at the Financial Institution and other financial institutions by means of the Automated Clearing House Network (“ACH”). The Financial Institution has agreed to do so on the terms of this Agreement.

The Company and the Financial Institution agree as follows:

**1. Definitions.** Unless defined in this Agreement, capitalized terms shall have the meanings provided in the Rules.

- a. Rules. “Rules” means the rules of the National Automated Clearing House Association (“NACHA”) and Appendices to the rules of the NACHA, as amended from time to time.
- b. Effective Entry Date. “Effective Entry Date” means the date included in any Entry as the date upon or after which such Entry is to be effective.
- c. Entry. “Entry” has the meaning given in the Rules, except that it shall also include an “On-Us Entry.”
- d. On-Us Entry. “On-Us Entry” means a debit or credit Entry to an account maintained at the Financial Institution.

**2. Compliance with the Rules and Applicable Law.** The Company’s rights and obligations with respect to any Entry are governed by the Rules, this Agreement and applicable law. The Company acknowledges it has a copy or has access to a copy of the Rules. The rules may also be purchased online at [www.nacha.org](http://www.nacha.org) under the publications tab. The Company agrees to comply with and be bound by the Rules. The Company agrees to comply with applicable state and federal law or regulation and Company warrants that it will not transmit any Entry that violates the laws of the United States, including, without limitation, regulations of the Office of Foreign Asset Control (“OFAC”).

### **3. Transmittal of Entries and Security Procedures.**

- a. The Company shall transmit any debit or credit Entry to the Financial Institution in accordance with the Rules and Attachment 1 to this Agreement. The Company shall comply with the security procedures described in Attachment 3 to this Agreement. The Company acknowledges that the security procedures are for verification of authenticity and not to detect errors in the Entry. Company warrants that no individual will be allowed to initiate transfers without proper supervision and safeguards and agrees to take all reasonable steps to maintain confidentiality of the security procedures and any related security features. If Company knows or believes that an unauthorized individual has transmitted or attempted to transmit one or more Entries or that the security procedures have otherwise been compromised, Company agrees to immediately notify the Financial Institution and agrees that any Entry received by Financial Institution before or within a reasonable time after such notice to the Financial Institution shall be treated as authorized by Company.
- b. The 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 accounts specified by Company in Attachment 1.

**4. Company's Representations, Warranties and Agreements.** Company represents and warrants that each Entry provided to the Financial Institution complies in all respects with the Rules. 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 the Company, including but not limited to those contained in this section 4 of this Agreement and (ii) Company's agreement to be bound by the Rules and applicable law. The Company shall indemnify the Financial Institution against any third party loss, liability or expense (including attorneys' fees and expenses) resulting from, related to or arising out of any breach of the Company's warranties or this Agreement. Without limiting the foregoing, Company warrants:

- a. Each Entry is authorized pursuant to the Rules and the authorization has not been revoked;
- b. Each credit Entry is timely and accurate;
- c. Each debit Entry is for a sum which, on the Settlement Date will be due and owing to the Company from the party whose account will be debited, is for a sum specified by such party or is to correct a previously transmitted erroneous credit Entry;
- d. Entries shall contain only the following permissible SEC codes in Attachment 1 to this agreement;
- e. No Entry has been reinitiated in violation of the Rules.

**5. Financial Institution Obligations.** Subject to Section 9 of this Agreement, the Financial Institution shall, in accordance with the Rules, process, transmit, and settle for any Entry. The

Financial Institution shall have no obligation to transmit an Entry if the Company fails to comply with any terms of this Agreement. Financial Institution represents and warrants that it will perform its obligations under this Agreement in accordance with the Rules and applicable law. Financial Institution shall indemnify the Company against any third party loss, liability or expense (including attorneys' fees and expenses) resulting from, related to or arising out of any breach of the Financial Institution's warranties or this Agreement.

**6. Company's Account.** The Company will maintain a deposit account (the "Account") with the Financial Institution at all times during the term of this Agreement. The Company shall at all times maintain a balance of available funds in the Account sufficient to cover Company's obligations under this Agreement. The Company authorizes the Financial Institution to debit its Account for any amount it owes the Financial Institution as a result of this Agreement.

**7. Financial Statements.** The Financial Institution may require the Company to provide Financial Statements at any time during this Agreement. Failure to provide such may result in the termination of this Agreement.

**8. Cancellation or Amendment of an Entry.** The Company shall have no right to cancel or amend any Entry after its receipt by the Financial Institution. However, the Financial Institution shall use reasonable efforts to act on a request by the Company to cancel an Entry before transmitting it to the ACH or crediting or debiting an On-Us Entry. The Financial Institution shall have no liability if it fails to effect the cancellation.

**9. Rejection of Entries.** The Financial Institution may reject any Entry, including an On-Us Entry, which does not comply with the requirements in all Attachments to this Agreement and may reject any Entry if the Company is not otherwise in compliance with the terms of this Agreement or the Rules. The Financial Institution shall notify the Company of such rejection no later than the business day such Entry would otherwise have been transmitted by the Financial Institution to the ACH or, in the case of an On-Us Entry, the day before its Effective Entry Date.

**10. Provisional Credit Notice.** In the case of a credit Entry, credit given by the Receiver's financial institution for the Entry is provisional until the Receiver's financial institution has received final settlement through Federal Reserve Bank or has otherwise received payment. If the Receiver's financial institution does not receive such payment for the Entry, the Receiver's financial institution 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.

**11. Reversals.** If the Company has mistakenly initiated a duplicate Entry or File or a File contains an Entry or Entries with the types of erroneous data specified in the Rules relating to reversing files, the Company may reverse the File or Entry pursuant to the Rules. If the Company reverses an Entry or File, Company shall indemnify the Financial Institution against any claim, demand, loss, liability or expense resulting directly or indirectly from such reversal.

**12. Notice of Returned Entries.** The Financial Institution shall notify the Company of the receipt of a returned Entry from the ACH no later than one business day after the business day of such receipt. The Financial Institution shall have no obligation to re-transmit a returned Entry if the Financial Institution complied with the terms of this Agreement with respect to the Entry.

**13. Periodic Statement.** The periodic statement issued by the Financial Institution for the Company's account will reflect Entries credited and debited to the Company's account. The Company agrees to notify the Financial Institution within a reasonable time not to exceed thirty (30) days after the Company receives a periodic statement of any discrepancy between the Company's records and the information in the periodic statement.

**14. Fees.** The Company agrees to pay the Financial Institution for services provided under this Agreement according to the Standardized Fee Form.

**15. Liability.** 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 of such information. The Financial Institution shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only in the event of loss due to its negligence or willful misconduct in performing those services. In no event shall either party have any liability for any consequential, special, punitive or indirect loss or damage which the other party may incur or suffer in connection with this Agreement. In addition, the Financial Institution shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission or communications facilities, equipment failure, war, act of terror, emergency conditions, or other conditions beyond the Financial Institution's control.

**16. Inconsistency of Name and Account Number.** The Company acknowledges that, if an Entry describes the Receiver inconsistently by name and account number, payment of the Entry may be made on the basis of the account number even if it identifies a person different from the named Receiver.

**17. Audit.** The Financial Institution may conduct an Audit upon request to ensure compliance with the Rules and procedures herein. Company agrees to comply and assist as necessary to complete the Audit to the satisfaction of the Financial Institution.

**18. Miscellaneous.** The Financial Institution may amend the terms of this Agreement from time to time upon written notice to the Company. Either party may terminate this Agreement. If the Financial Institution terminates this Agreement, no advance notice is required and the Financial Institution will not be liable to the Company for any inconvenience or other issues this may cause. The Financial Institution shall be entitled to rely on any written notice believed by it in good faith to be signed by one of the Authorized Representatives whose names and signatures are set forth on Attachment 2 to this Agreement. This Agreement shall be governed by and construed in accordance with the law of the state of Wisconsin.

[Signature page follows.]

Manitowoc Public Utilities  
Company

1303 S. Eighth Street  
Address

Manitowoc, WI 54220  
City, State

By: \_\_\_\_\_  
Company Authorized Signer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Bank First National  
Financial Institution

402 N. Eighth Street  
Address

Manitowoc, Wisconsin 54220  
City, State

By: \_\_\_\_\_  
Financial Institution Authorized Signer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**A. Delivery of Files:**

- Delivery location: Bank First National, 8<sup>th</sup> Street office
- Timing of Delivery:  
**For consumer/business DEBIT transactions:** One (1) business day prior to the effective entry date, by 2:30 p.m. central standard time.  
**For consumer/business CREDIT transactions:** Two (2) business days prior to the effective entry date by 2:30 p.m. central standard time.

**B. Limits and SEC Codes:**

- The total dollar amount of Entries transmitted by Company to Financial Institution on any single day and in any single file shall not exceed \$\_\_\_\_\_. Financial Institution may review the limits set forth in the preceding sentence and change the limits upon notice to the Company.
- Entries shall contain only the following permissible SEC codes as defined below.

	<b>Company Identification</b>	<b>Entry Description</b>	<b>SEC Code</b>	<b>Processing Schedule</b>	<b>Delivery Method</b>
1					
2					
3					

**D. Accounts: \_\_\_\_\_**

**C. Contacts:**

Bank First National  
 Treasury Management Department  
 402 N 8<sup>th</sup> Street, P.O. Box 10, Manitowoc, WI 54221-0010  
 Phone: (920) 652-3100  
 Email: electronicbanking@bankfirstnational.com

**Attachment 2**

**List of Authorized Representatives for ACH Origination**

The undersigned certifies that the individuals listed below are Authorized Representatives of Company for purposes of this Agreement. Until Financial Institution receives written notice from Company that revokes the authorization granted to any of the individuals listed below, and has a reasonable opportunity to act on it, Financial Institution shall continue to rely upon the authority granted hereunder to such Authorized Representatives and rely on all information provided by such Authorized Representatives.

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

Limitations of Powers: \_\_\_\_\_

**A. Security Procedures**

The Financial Institution shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by the Authorized Representative and any such communication shall be deemed to have been signed by such person.

**B. Transaction Verification**

The Company is responsible for ensuring that the Financial Institution receives the ACH file on each processing date indicated in the processing schedule in Attachment 1. Upon receipt of the ACH file, the Financial Institution will send the Company an ACH Transfer Notification email stating the transmission has passed all origination steps without exception. The email will also include the total debit and credit amount and effective date of the file. The Company's Authorized Representative will notify the Financial Institution by 2:00 P.M. CST if the ACH Transfer Notification email has not been received or if the total dollar amount or effective date isn't correct.

The Company is solely responsible for the accurate creation, modification, and deletion of the account information maintained on the Company's personal computer and used for ACH money transfer. The Company agrees to comply with written procedures provided by the Financial Institution for the creation, maintenance, and initiation of ACH money transfer.

The Company is solely responsible for access by its employees of the data files maintained on the Company's computer.

The Company is responsible for operator security procedures on the personal computer licensed for use of the Program.

The Company is responsible for using a commercially reasonable level of encryption technology when transmitting any information related to an ACH Entry.