

Direct Payment Service Agreement

- 1. Agency.** Customer appoints BizPay Direct, Inc. (BPD) as its agent for the transfer of monies, including payroll and related payments, from the Customer to those persons designated as payees (the "Payees"). Customer authorizes BPD to process book entries to and from the bank accounts listed on Exhibit A (the "Authorized Accounts") for the purpose of making such transfers, any related corrections and adjustments and collection of fees and charges and to process book entries to and from the Payees designated bank accounts for the purpose of making such transfers and any related corrections and adjustments, all as further set forth herein and in the BPD Operating Procedures provided to the Customer in connection with this Agreement.
- 2. Payment.** BPD agrees that on those dates designated in accordance with the BPD Operating Procedures (or the next banking day if such date(s) fall on non-banking days) during the term of this Agreement, BPD will submit to various networks, including but not limited to the Automated Clearing House and the Federal Reserve System, data in the form required for the electronic crediting of those payments to the Payees' designated bank accounts and the debiting of those payments from the Authorized Accounts
- 3. Authorization.** Customer will obtain directly and from each participating Payee and deliver to BPD necessary information in proper form authorizing automatic book entries to and from (i) the Authorized Accounts and (ii) each Payee's bank account(s), including related corrections or adjustments. All Payee authorizations shall comply with National Automated Clearing House Association rules and procedures and shall release BPD from all liability to Payee in accordance with the terms of this Agreement.
- 4. Payment Data.** The Customer shall provide BPD with all data necessary for the desired electronic funds transfers ("Payment Data") in the form and at the time prescribed in the BPD Operating Procedures and shall make periodic checks to assure that the Payment Data is current and accurate at all times. BPD assumes no responsibility or liability for delays in service caused by Payment Data or changes which are not received within the time frames or in the format prescribed in the BPD Operating Procedures. Customer warrants to BPD that all Payment Data delivered to BPD by Customer (a) will be in the form prescribed in the BPD Operating Procedures, (b) will contain true and accurate information, (c) will be fully authorized by Customer and Payees, and (d) will be timely under the terms and provisions of this Agreement. BPD has no responsibility to review such data in any manner, including accuracy, consistency and conformity to prior Payment Data.
- 5. Fees.** Customer will pay Transaction Processing Fees, Administrative Fees, Implementation Fees, applicable Federal Reserve and Automated Clearing House fees in effect, postage and shipping charges incurred by BPD and any applicable taxes, all as set forth in the BPD Operating Procedures. The applicable fees and charges may be changed by BPD at any time and from time to time upon thirty (30) days prior written or electronic notice to Customer. BPD will automatically deduct from Authorized Accounts all fees and other charges owed to BPD by the Customer.
- 6. Settlement.** In settlement for each book entry returned unpaid or requiring adjustment, Customer authorizes BPD to debit or credit Authorized Accounts on the day the return is received by BPD or thereafter, and Customer warrants that it shall maintain at all times a sufficient balance in the Authorized Accounts to cover debit entries. Customer will pay to BPD the amount of any returned book entry account balance with BPD to cover returns. Customer gives BPD its express permission to make electronic book entries to or from the Authorized Accounts for any returns and chargebacks, any reserve account deficiencies and any fees due BPD. Should an offsetting debit be returned unpaid, this return shall be considered as notification by the customer to BPD that the associated payroll credits were erroneous, and specifically grants permission for them to be reversed.

- 7. Warranties and Limitations of Liability.** BPD MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE. Because of the difficulty of fixing actual damages, the parties agree that BPD's liability hereunder, if any, shall be limited to liquidated damages in the amount of the total Transaction Processing Fees, Administrative Fees and Implementation Fees charged for the one calendar month immediately preceding the month in which the event occurred which gave rise to the damages, regardless of the cause or origin of such loss or damage and whether it results directly or indirectly from performance or non-performance of BPD's obligations under this Agreement. IN NO EVENT WILL BPD BE RESPONSIBLE FOR (A) ANY INCIDENTAL OR CONSEQUENTIAL LOSSES RESULTING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY OF BPD'S DUTIES, OR (B) FOR ANY LOSS OR DAMAGE TO CUSTOMER, DIRECT OR CONSEQUENTIAL, ARISING OUT OF OR IN ANY WAY RELATED TO ACTS OR OMISSIONS OF THIRD PARTIES INCLUDING, BUT NOT LIMITED TO, VARIOUS COURIER SERVICES, THE FEDERAL RESERVE BANK, THE AUTOMATED CLEARING HOUSE, THE BANKS WHICH CUSTOMER DEALS OR THE EMPLOYEES OR AGENTS OF SUCH BANKS, OR ANY FINANCIAL INSTITUTION WHICH RECEIVES OR ORIGINATES ENTRIES OR MAKES ELECTRONIC TRANSFERS.
- 8. Compliance with Law and Indemnification.** A. Customer shall be solely responsible for compliance with all laws and regulations, whether federal, state, local, or automated clearing house rules, applicable to automatic and electronic transfers of funds, including those governing correct authorizations by Payees, disclosures and notices required in connection with electronic funds transfers and all necessary waivers and releases. BPD makes no representation or warranty that any form provided by BPD is sufficient or otherwise in compliance with applicable federal, state or local legal requirements or rules. BPD shall have no liability to Customer for failure of any such forms to comply with such requirements of rules.
- B. Customer will indemnify and hold harmless BPD and BPD's processing financial institution from any and all claims, lawsuits, demands, damages, costs or other expenses, including, but not limited to, attorney fees, resulting from or in any way related to (a) Customer's breach of any warranty contained herein or arising by operation of law, (b) any act or omission of Customer or Customer's employees or agents, including fraudulent or incorrect transmission of data, or unauthorized or inappropriate access to BPD's data files (c) Customer's failure to comply with any applicable law, regulations or rule, or (d) any retrieval of or failure to retrieve funds incorrectly deposited to a Payee, except to the extent caused by BPD's negligence, provided, however, that this indemnification shall not apply to any loss caused to BPD by failure of the forms provided by BPD to comply with law, if such forms have been properly used by Customer in accordance with BPD's directions.
- 9. Delays and Excuse From Performance.** BPD shall not be liable for any delay or other failure of performance caused by factors beyond the reasonable control of BPD, such as, but not limited to, strikes, insurrection, war, fire, lack of energy, acts of God, mechanical or electrical breakdown, governmental acts or regulations, computer malfunction or acts of third parties.
- 10. Marketing Materials and Use of BPD Marks.** BPD may provide Customer with marketing materials or forms containing the BPD name, service mark, symbols and logos associated therewith ("BPD Marks") from time to time. Customer will use the BPD Marks only in a manner and form approved by BPD and solely in connection with solicitation of Payee participation in the automatic payment services to be provided hereunder. All title to and interest in the BPD Marks remain with BPD. Upon termination of this Agreement, for any reason, Customer shall have no further right to use the BPD Marks.
- 11. Term and Termination.** The term of this Agreement shall be for one year, renewable automatically for each succeeding year thereafter, unless terminated as follows. Either party may terminate this Agreement at any time on fifteen (15) days prior written notice to the other party. Upon termination, all rights and obligations hereunder shall cease except Customer's obligation (a) to pay the applicable fees and provide indemnification for any services performed by BPD prior to the effective date of termination, and (b) to pay for any items returned subsequent to the effective date of termination. Upon termination, Customer should inform the bank not to honor book entry activity from BPD (except for those obligations referred to in the preceding sentence)

- 12. **Disclaimer of Third Party Rights.** The rights and obligations created by this Agreement apply solely to the parties hereto, except with respect to the indemnity provisions applicable to BPD's processing financial institution. Neither BPD nor Customer intends that any other third party, including Payee, shall (i) benefit from the performance of the duties described herein, or (ii) acquire any cause of action or other claim against BPD for non-performance of those duties.
- 13. **Entire Agreement.** This Agreement and the BPD Operating Procedures constitute the entire agreement between the parties relating to the specific subject matter hereof. No modification of this Agreement shall be binding on BPD unless such modification is in writing and signed by an authorized representative of BPD.
- 14. **Notices.** Any notice required or allowed to be given under this Agreement shall be addressed to the other party at the address set forth on the front page or to such other address as either party may instruct the other party in writing.
- 15. **Applicable Laws.** This Agreement shall be construed in accordance with the laws of the State of North Carolina.
- 16. **Assignability.** This Agreement is not assignable by either party without first receiving the prior written consent of the other party.

Accepted

Company Name: _____

By: _____

Date: _____