



PAYROLL SERVICES AGREEMENT

This Agreement is between Benefit Administrative Services International Corporation, a/k/a BASIC a Michigan Corporation dba BASIC Payroll Plus (the "Processor"), located at 1575 44th St SW, Wyoming MI 49509, and _____ ("Employer").

PURPOSE OF CONTRACT

The Processor will initiate services that will allow for the calculation of payrolls leading to the completion of electronic direct deposit services and preparation of related vouchers (collectively the "Payroll Services") upon information given to it by the Employer, through a batch processing service with Fifth Third Bank (the "Bank"). This is a contract in perpetuity that will terminate by proper notice or by the conditions that are outlined in this Agreement.

Therefore, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, this document being five (5) pages in length, the parties agree as follows:

SPECIFIC PROVISIONS

- [1] **Definitions of terms.** a) "NSF" is a monetary term meaning insufficient or non-sufficient funds of an account held in a financial institution and b) "ACH" means automated clearing house.
- [2] **Vouchers.** In order to pay the Employer's employees, the Processor will prepare vouchers which will include, at a minimum, the following information: employee's name and address, amount of payment, date of payment, and identification of account into which the funds are deposited (the "Vouchers"). This information will be provided to Processor by Employer and therefore Employer is responsible for the accuracy of information to be used by Processor.
- [3] **Account.** The Employer will establish and maintain a commercial checking account (the "Payroll Account") and will maintain within it, available funds in an amount sufficient to cover the Employer's net payroll as reported to the Bank by the Processor. **In the event an account is NSF for more than two (2) days, it will be considered a material breach of this contract in which all electronic deposit services will cease. Time is of the essence for the Employer to cure the defaulted NSF.** Processor reserves the right to suspend its performance under this Agreement or cancel this contract at any time in the event of default or violation by Employer of any of the provisions of this Agreement, or in the event, in the opinion of Processor, the credit of Employer shall become impaired. This suspension or cancellation will not prejudice any other right of the Processor against the Employer. Processor will have the right to terminate all or part of its performance under this Agreement. If Processor chooses to suspend performance, it may at any time elect to terminate this Agreement. Should the Processor decide to continue Payroll Services other than those that are electronic in nature, it will be at its discretion, but the Processor may terminate the contract without notice as otherwise provided for by this Agreement unless such NSF issues have been cured in a timely manner, **NOT TO EXCEED TWO (2) BUSINESS DAYS.** Otherwise, proper notices must be given by either party as stated within this Agreement.

- [4] **Service Pricing.** See proposal.
- [5] **Power of Attorney.** Should Employer fail to correct the NSF as provided for in this Agreement due to unavailability or any other reason, Employer hereby irrevocably appoints Processor as its attorney in fact in the state of Employer's business or location of its available bank accounts, solely for the purpose of withdrawing, depositing and otherwise transferring funds from any of Employer's financial bank accounts into the account in which an NSF has been issued. This appointment is not subject to contest. The authority of the appointed attorney in fact to exercise this granted power will commence on the day following the two business days allotted to cure the defaulted NSF, and will remain in force and effect until such NSF has been cured. At such time, this power will cease and will be invoked again only when the condition described within this provision occurs. Employer confirms everything that the appointed attorney in fact may lawfully do by virtue of this signed and dated instrument.
- [6] **Funds.** The Bank will charge the Employer's Payroll Account with the total net payroll relating to the Payroll Services as reported to the Bank by the Processor for each payroll cycle. In the event that the Federal Tax Liability is more than \$100,000 in a payroll period, all funds (Direct Deposit and Taxes) for that payroll must be wired to the Processor. This wire must be received prior to any direct deposits being transmitted to the bank. In addition if the Payroll Account does not have sufficient collected funds to meet the net payroll on any payroll cycle and continues to be insufficiently funded for two (2) business days thereafter, the Employer hereby authorizes the Processor to have the Bank debit any other account maintained by the Employer for the amount of such deficiency, which may include but not be limited to overdrafts, maintenance fees and other related costs.
- [7] **Parties.** In the event Employer is unable to comply with the terms of this contract in any way, including but not limited to, filing bankruptcy, being adjudicated a bankrupt, a receiver is appointed and qualifies, engaging in layoffs, receiving assessments from local, state or federal agencies, or any other matter materially affecting Employer's ability to maintain a Payroll Account with sufficient funds, Employer will notify Processor immediately of such issues which may invoke the ability of Processor to terminate this contract in accordance with the provisions of this Agreement. In the event Processor, its agents or employees are unable to perform according to the terms of this Agreement, whether by bankruptcy or other matter, Employer may terminate this agreement and all future rights and future obligations under this agreement, by writing, after having received proper notice from Processor of such circumstance. Notice will not bar any liability for outstanding costs or expenses owed Processor by Employer before any termination takes place.
- [8] **Records.** The Employer will retain the original or a copy of each authorization received from each employee for electronic direct deposit for two (2) years after termination or revocation of such authorization. This Agreement and the performance by the Bank of its services under this Agreement, including the performance of services by the Processor, will neither relieve the Employer of any obligation imposed by law or contract regarding the maintenance of records or other matters nor from employing adequate credit accounting and review practices customarily followed by similar businesses.
- [9] **Liability.** The Processor will not be liable for any damage or loss (including, but not limited to, liabilities, costs, and expenses) to the Employer or its employees arising out of the acts or omissions of any third parties, including, but not limited to, any courier service company, the Nationwide Automated Clearing House (the "ACH"), the National Automated Clearing House Association (the "NACHA"), or any other ACH organization, any Federal Reserve Bank, any receiving financial institution in which an employee maintains an account, any receiving depository institution, or any processor. The Processor makes no representations or warranties except as expressly stated within this Agreement and all other warranties, express or implied, are

specifically excluded. In no event will the Processor be liable for incidental or consequential damages even if the Processor has been advised of the possibility of such damages. In no event will the Processor's total liability to the Employer pursuant to any claim arising out of or relating to this Agreement or the transactions covered by this Agreement (whether in contract or in tort) exceed the dollar amount of the official check(s) and/or voucher(s) on which the claim is based.

- [10] **Indemnification.** The Employer, as it pertains to this provision and Agreement to include any officers, principals or agents, bear the risk of loss and agrees to indemnify and hold harmless the Processor from all liabilities, losses, costs, expenses (including reasonable attorney's fees), judgments, interest or other related fees, incurred by the Processor and caused by or arising out of: a) any breach by the Employer of any provision of the Agreement or contained in any other agreement by the Employer with any employee, b) any failure by the Employer to comply with any provision of applicable federal, state, or local laws, regulations, rules or operating letters, including, but not by way of limitation, The Electronic Fund Transfer Act, Regulation E promulgated there under and all its amendments, and any changes in the law that may arise, c) any action taken by the Processor in reliance upon or pursuant to any instructions or specific request of the Employer including, but not limited to, the reversal of any electronic direct deposit to an account of an employee maintained at the Bank or at another financial institution, the disbursement of any sums which the Bank is authorized to withhold, or Employer's own negligence in correctly reporting information to Processor to perform Payroll Services, which Employer agrees would amount to a waiver of its right to sue under this Agreement, or d) the failure of Bank or any other entity used by Processor for the timely completion of such Payroll Services including but not limited to computer malfunction, fire, strike, war, government order or any other unavoidable delay which is beyond the control of both parties. Notwithstanding subparagraph "(c)" of this paragraph, the Employer agrees that the Bank will have the right at all times to refuse to reverse any electronic direct deposit to the account of an employee maintained at the Bank or at a receiving financial institution.
- [11] **Party Obligations.** Employer, by way of its principals, officers and agents, hereby personally guarantees and undertakes the duties and obligations of this Agreement for itself, successors, heirs and executors, and by this Agreement intends to create a personal or joint and several obligation on this Agreement, based on the type of business entity Employer is organized under by way of law. **There is no limitation on liability of Employer should it breach this contract on the provisions contained within this agreement.** Additionally, **Processor agrees to full liability if Processor, its principals, officers or agents, misappropriates funds entrusted to it by Employer. This provision also applies to any funds transferred by Processor under the power of attorney provision.** However, personal misappropriation of funds does not include any errors made by Bank or other institution in the transfer of funds from Employer's account to the employee account based on the good faith information provided to Bank by Processor, as received by Processor from the Employer.
- [12] **Warranties.** The Employer warrants and represents that there are no provisions of any law, whether federal, state or local, or of any certificate of incorporation, by-law or agreement of any kind, nature or description binding upon the Employer, which prohibits the Employer from entering into this Agreement, and that the Employer's performance of the Agreement has been duly authorized and is a binding obligation of the Employer.
- [13] **Termination.** This Agreement may be terminated with or without cause by either party immediately upon written notice to the other, sent by registered or certified mail, or personal delivery of notice, at the respective addresses as specified within this Agreement; provided however, the Employer's duty to maintain sufficient funds in its Payroll Account will continue until no shortages remain in the Payroll Account in connection with the Payroll Services provided by the Processor. Upon termination, the Employer will notify its employees or will take other appropriate and reasonable action to inform its employees of such termination or to arrange for a

substitute service. The Employer agrees that upon termination of the Agreement, the Employer will immediately cease any use of Vouchers. The parties agree that in case of violation by Employer, or any of its agents or employees, of any of the provisions contained in this Agreement, Processor will have the right to declare this contract void. Cancellation of this contract, by either party, will not disallow any claims that Processor may have against Employer for past services provided while the contract was in effect.

- [14] **Tax Filing.** If the Employer participates in this service, the Employer is responsible to make sure the taxes are funded and paid. If there are issues with payment, the Processor, will assume responsibility for penalties only of late payments to the degree that the error was caused directly by the Processor's failure to make the payment in a timely manner. Responsibility for penalties will only be accepted for those incurred beginning with the first full quarter after the Processor begins its function. This responsibility will end when the Processor ends its function as the provider or this agreement is terminated. It is also understood that errors or faulty returns may be caused by inaccurate information provided to the Processor or inaccurate set up in the system by the Employer, Employer's staff, accountants or other involved parties. If such is the case, the Processor may be willing to help rectify the situation, but will not be responsible for any resultant penalty or interest charges.

GENERAL PROVISIONS

- [15] **Integration.** This Agreement embodies the whole agreement of the parties and there are no promises, terms, conditions, or obligations other than those contained within this Agreement. The parties agree that this Agreement replaces and supersedes any prior agreements, communications, representations, discussions and understandings, either verbal or written, between the parties. This Agreement may be amended or modified only by the written agreement of the parties. No change, addition, or erasure of any printed portion of the Agreement will be valid or binding on either party. Any agreement subsequently made by the parties to amend, extend or discharge this contract, in whole or in part and on one or more occasions, will not be invalid or unenforceable because of lack of consideration, provided that such agreement or agreements will be in writing and executed by the parties.
- [16] **Assignment.** This Agreement will not be assigned or otherwise transferred by the Employer to any other person, corporation or entity without the prior written consent of the Processor, which consent may be granted or withheld at the Processor's discretion. Irrespective of any assignment that may or may not be granted, all of the agreements, terms and conditions contained in this Agreement will bind and apply to the benefit of the parties, heirs, legal representatives, successors and assigns (only if applicable) of the respective parties.
- [17] **Governing Law.** This Agreement will be governed by the laws of the State of Michigan, both to interpretation and performance, and the applicable rules and regulations of the Processor, the Bank and NACHA, which are incorporated as a part of this Agreement.
- [18] **Venue.** Any and all suits for any breach of this contract will be instituted and maintained in any court of competent jurisdiction in the County of Kent, State of Michigan. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision of this contract will be instituted only in the courts in the County of Kent, State of Michigan.
- [19] **Other parties.** The Employer's employees are not parties to this Agreement, and under no circumstance will such employees be construed as third party beneficiaries of this Agreement.
- [20] **Actions.** The Processor and the Employer agree that each is acting independently of the other that they are not joint ventures and that neither is an agent of the other.

- [21] **Confidentiality.** All private information, financial, banking, and otherwise, whether printed, written or oral, in answer to special inquiry by Processor or voluntarily furnished by Employer or its agents or employees to Processor, will be held in confidence by Processor and used for business purposes only.
- [22] **Headings.** The headings in this agreement are inserted for convenience of reference only and are not intended to affect the interpretation, limitation, or construction of the Agreement in any way.
- [23] **Severability.** Whenever possible, each provision of this Agreement will be interpreted in such a way as to be effective and valid under applicable law. If any part, term, or provision of this contract is prohibited by law or invalid under applicable law, it will be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement. Further, the rights and obligations of the parties will be construed and enforced as if this Agreement did not contain the particular part, term, or provision held to be invalid.
- [24] **Gender.** The use of the masculine gender will be construed to include the feminine gender, and visa versa.
- [25] **Form.** The use of the singular form of expression will be construed to include the plural, and vis versa.
- [26] **Remedies.** Remedies provided by this Agreement will be cumulative, and the assertion by any party of any right or remedy will not preclude the assertion by such party of any other rights or the seeking of any other remedies.
- [27] **Attorney Fees.** If suit is brought by Processor for the recovery of any payment due under this Agreement or for the breach of any provision of this Agreement, the other party agrees to pay all costs in connection with the suit, including reasonable attorney fees, whether or not the suit proceeds to judgment.

The parties have caused this Agreement to be executed as of _____ (date).

Employer: _____

By: _____

Title: _____

Witness: _____

BASIC Payroll Plus:

By: _____

Title: _____

Witness: _____