

EMPLOYER DIRECT DEPOSIT AGREEMENT

This Employer Direct Deposit Agreement (this “Agreement”) is made by and between you (“Employer”) and Nationwide TFS, LLC (“TFS”).

WHEREAS, TFS is in the business of, among other things, (a) providing services to debtors (each, a “Debtor”) in bankruptcy under Chapter 13 of U.S. Bankruptcy Code (Title 11 of the United States Code) (“Chapter 13”), including facilitating Chapter 13 payments by or on behalf of Debtors to the respective trustees administering Debtors’ Chapter 13 cases (each, a “Trustee”), and (b) providing services to employers who employ one or more Debtors (each, an “Employee Debtor”) and who are subject to Court orders requiring them to remit a portion of such Employee Debtor’s wages to a Trustee in satisfaction of Chapter 13 payments to be made by such Employee Debtor (“Wage Payments”);

WHEREAS, TFS has entered into agreements with one or more financial institutions (each, a “Financial Institution”) which address, among other things, the Financial Institution’s receipt of funds from or on behalf of Debtors, its retention of such funds in a Financial Institution account for the benefit of the applicable Trustees (the “FBO Account”), and its transfer of funds via the automated clearing house system (“ACH”) to such Trustees;

WHEREAS, Employer, from time to time, may be obligated to make Wage Payments;

WHEREAS, Employer desires to engage TFS to facilitate the remittance of the Wage Payments, and TFS desires to be so engaged on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises made herein and for other valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. Definitions. The terms defined below, whenever used in this Agreement, shall have the respective meanings indicated below for all purposes of this Agreement.

“Amendment” has the meaning set forth in Section 16.

“Business Day” means a day, other than a Saturday or a Sunday, on which commercial banks are not required or authorized to close in the City of New York.

“Employer’s Bank” means the bank or other financial institution at which Employer maintains an account from which Wage Payment withdrawals are to be made, as identified by Employer via the Employer TFS Account.

“Employer’s Bank Account” means Employer’s account at Employer’s Bank, as identified by Employer via the Employer TFS Account.

“Employer TFS Account” has the meaning set forth in Section 2(a).

“Funds” means, with respect to a Withdrawal, the amount of the Wage Payment to be withdrawn from the Employer’s Bank (as specified by Employer in the Employer TFS Account) plus the TFS Fee payable with respect to such Wage Payment.

“TFS Fee” has the meaning set forth in Section 3.

“Website” means www.TFSBillPay.com or any other website TFS may designate by Amendment.

“Withdrawal” has the meaning set forth in Section 2(a).

2. Employer TFS Account; Services.

(a) TFS will provide Employer with a unique username and password to access the TFS Employer Portal (via the Website) to establish an account with TFS (the “Employer TFS Account”). Thereafter, through one or more of the TFS services subscribed by Employer via the Employer TFS Account, (x) the Employer can remit Wage Payments into an account at a Financial Institution (the “Bridge Account”) which will be swept by TFS into the FBO Account for payment to the applicable Trustee (the “Push Services”), or (y) TFS will cause Wage Payments to be made by withdrawing (via ACH such other means as Employer and TFS mutually agree) Funds from the Employer’s Bank Account (a “Withdrawal”) into the FBO Account (each, a “Withdrawal”) and utilizing the Funds to remit such Wage Payment to the applicable Trustee and to remit the TFS Fee to TFS (the “Pull Services”).

(b) To facilitate the Pull Services, Employer appoints TFS as Employer’s agent to authorize the transfer of Funds on Employer’s behalf in accordance with the instructions provided by Employer via Employer TFS Account, subject to the terms and restrictions of this Agreement. In addition, Employer authorizes TFS to remit (and to authorize the applicable Financial Institution to remit) the Wage Payment funds received or withdrawn by TFS to the applicable Trustees (and, in the case of the Pull Services, to remit the balance of the Funds to TFS in payment of the TFS Fees).

(c) Employer acknowledges and agrees that (i) Employer will not be able to cancel any Wage Payments or TFS Fee payments except as permitted under this Agreement, (ii) each applicable Financial Institution may rely solely and exclusively upon information and instructions received from TFS that relate to any relevant transfer of funds, including Withdrawals, Wage Payments, and TFS Fee payments, and (iii) Employer hereby forever discharges and releases each Financial Institution from any claim, obligation or liability that may arise out of or relate to any action taken by such Financial Institution in reliance upon or in connection with any such information or instruction received from TFS, except to the extent such claim, obligation or liability is based on such Financial Institution’s gross negligence, willful misconduct, or violation of law. **Employer acknowledges that TFS is not a bank, the Push Services and the Pull Services are not money transfer or banking services, and all money transfer or banking services contemplated hereunder shall be provided by a Financial Institution.**

(d) To prevent Wage Payments from being made on bankruptcy cases that no longer are active, TFS, from time to time, (x) will seek to confirm an Employee Debtor’s case status by accessing the National Data Center’s database, the Public Access to Court Electronic Records (PACER) service, or the database of the Trustee administering such Employee Debtor’s Chapter 13 bankruptcy case, and (y) will notify Employer if, as a result thereof, it learns that such Employee Debtor’s case status has been switched to completed, dismissed or converted. Notwithstanding the foregoing, it is the obligation of Employer to terminate the services hereunder with respect to any Employee Debtor whose bankruptcy case is no longer active, and TFS shall have no liability for any Wage Payments made pursuant to and in accordance with this Agreement prior to such termination.

(e) Employer promptly shall inform TFS if Employer believes its Employer TFS Account login information, including its user name or password, has been lost, stolen or compromised, or if someone has compromised or gained unauthorized access to its Employer TFS Account, or if there has been an unauthorized or incorrect Wage Payment made hereunder. Employer acknowledges that risk of loss associated with user names or passwords that have become compromised is Employer’s

responsibility. Employer, and each person authorized by Employer to access the Employer TFS Account, shall be bound by the Terms and Conditions and Privacy Policy set forth on the Website, as the same may be amended or updated from time to time. Employer represents and warrants that Employer shall utilize the Employer TFS Account only for the purposes described herein, and that all information Employer supplies thereon shall be accurate and complete in all respects.

3. Fee Payments.

(a) With respect to each Wage Payment made by Employer either via a Push Service or a Pull Service, Employer shall pay to TFS a fee of \$1.99 (the “TFS Fee”). The TFS Fee may be amended as provided in Section 16 hereof. TFS will bill Employer monthly for TFS Fees payable in connection with Push Services, and such invoices are due and payable upon receipt. For TFS Fees payable in connection with Pull Services, the TFS Fee will be included in the Funds that are the subject of the Withdrawal and will be remitted to TFS when the associated Wage Payment is made to the applicable Trustee.

(b) In addition to the TFS Fee, TFS shall invoice Employer for the following amounts, which are due and payable upon receipt:

(i) With respect to Push Services, a \$10 administrative fee each Wage Payment that is reversed; and

(ii) With respect to Pull Services, the following fees:

- (1) Each ACH High-Risk return: \$60
- (2) Each stop payment: \$60
- (3) Each other ACH returns: \$6

4. Notices; Electronic Communications.

(a) Any notice or other communication required or permitted under this Agreement shall be in writing and shall be considered given when delivered personally, one Business Day (as herein defined) after being sent by overnight courier for next Business Day delivery, five Business Days after being mailed by certified mail, return receipt requested, postage prepaid or, if sent by email, when receipt is acknowledged by the recipient or twenty-four (24) hours after being sent, whichever is earlier, to the parties as follows (or to such other street or email address as may be indicated in writing by any party to the other party in the manner provided herein for giving notice):

If to Employer, to the street address or email address, as applicable, set forth in the Employer TFS Account, and

If to TFS, to

Nationwide TFS, LLC
500 North Broadway, Suite 240
Jericho NY 11753
Attention: Patrick K. Schaefer, Chief Executive
Email: support@tfsbillpay.com

(b) Employer represents and warrants that the information provided by Employer in the Employer TFS Account, including the email address, mailing address, and the like (collectively, the “Employer Contact Information”), is and at all times will be true, complete, and correct in all respects,

and such email address is working and functional. TFS will not be liable for any undelivered emails sent to the email address identified in the Employer Contact Information or any costs Employer incurs for maintaining the means of receiving emails from TFS, including, without limitation, the cost for internet access or an e-mail account. Employer shall notify TFS forthwith if any of the Employer Contact Information is changed, or if Employer's email address in the Employer Contact Information is cancelled or no longer functional. TFS reserves the right to take measures to ensure the integrity of its contact directory, and Employer reasonably shall cooperate if such measures are taken.

5. Termination. This Agreement shall remain in force until terminated as provided herein. TFS may terminate this Agreement, including access to the Employer TFS Account, for any reason and at any time upon not less than 30 days' notice to Employer. Employer may terminate this Agreement (in whole or with respect to one or more Employee Debtors) or any Wage Payment at any time upon notice to TFS, provided that such termination shall not affect Wage Payments held in the Bridge Account or the FBO Account at the time of such termination.

6. Confidentiality. TFS will NEVER disclose information to third parties about the Employer TFS Account, except:

- (a) where it is necessary for processing Wage Payments;
- (b) in order to verify the existence and condition of the Employer TFS Account for a third party, such as Employer's accounting software provider or an applicable Trustee;
- (c) in order to comply with applicable laws, rules, regulations, orders of government agencies, court orders, subpoenas, civil investigative demands, or any other similar legal process; or
- (d) if Employer gives TFS permission to do so.

7. Severability. Any provision of this Agreement which is deemed invalid, illegal or unenforceable in any jurisdiction shall, as to that jurisdiction and subject to this paragraph, be ineffective to the extent of such invalidity, illegality or unenforceability, without affecting in any way the remaining provisions hereof in such jurisdiction or rendering that or any other provisions of this Agreement invalid, illegal, or unenforceable in any other jurisdiction. If any covenant should be deemed invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

8. Entire Agreement. This Agreement, together with the Terms and Conditions and Privacy Policy set forth on the Website, as the same may be amended or updated from time to time, constitutes the final, complete and exclusive embodiment of the entire agreement and understanding between the parties related to the subject matter hereof, and supersedes and preempts any prior or contemporaneous understandings, agreements or representations by or between the parties, written or oral, with respect to such subject matter, including any Employer Direct Deposit Agreement previously executed by the parties.

9. Governing Law; Venue. This Agreement shall be construed in accordance with and governed by the internal laws (without reference to choice or conflict of laws) of the State of New York. In respect of any dispute between the parties regarding the subject matter hereof, the parties hereby irrevocably consent and submit to in personam jurisdiction in the courts of New York, Counties of Suffolk and Nassau, including the United States courts located in and for the Eastern District of New York, and to all proceedings in such courts. The parties hereby agree that such courts shall be the venue and exclusive and proper forum in which to adjudicate any case or controversy arising either, directly or indirectly, under or in connection with this Agreement and that they will not contest or challenge the jurisdiction or venue of these courts.

10. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL TFS, ANY FINANCIAL INSTITUTION, OR ANY OF THEIR REPECTIVE EMPLOYEES, MANAGERS, MEMBERS, OR OFFICERS (COLLECTIVELY, THE “SERVICE PARTIES”) BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE EMPLOYER TFS ACCOUNT, THIS AGREEMENT, OR THE SERVICES PROVIDED BY TFS HERUENDER (HOWEVER ARISING, INCLUDING NEGLIGENCE) INCLUDING, WITHOUT LIMITATION, THE LOSS OF PROFIT, USE, SAVINGS, OR REVENUE, OR THE CLAIMS OF THIRD PARTIES, WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO EMPLOYER. THE ENTIRE AND AGGREGATE LIABILITY OF THE SERVICE PARTIES, AND EMPLOYER’S EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM CONCERNING OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE SUBJECT MATTER OF THIS AGREEMENT, IN ANY AND ALL CIRCUMSTANCES, SHALL BE THE RECOVERY BY EMPLOYER OF EMPLOYER’S PROVEN, ACTUALLY INCURRED, DIRECT DAMAGES; PROVIDED, HOWEVER, IN NO EVENT SHALL THE TOTAL CUMULATIVE LIABILITY OF THE SERVICE PARTIES FOR ALL DAMAGES FOR ALL CLAIMS WHETHER IN CONTRACT, TORT OR OTHERWISE HOWSOEVER CAUSED OR ARISING, EXCEED THE TOTAL AMOUNT PAID BY EMPLOYER TO TFS IN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

11. NO WARRANTY. THE SERVICES DESCRIBED HEREIN ARE PROVIDED AS IS AND WITHOUT ANY WARRANTY OR CONDITION, EXPRESS, IMPLIED OR STATUTORY. TFS SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TFS DOES NOT GUARANTEE CONTINUOUS, UNINTERRUPTED OR SECURE ACCESS TO ANY PART OF THE WEBSITE, THE EMPLOYER TFS ACCOUNT, OR THE SERVICES DESCRIBED HEREIN, AND USE OF THE EMPLOYER TFS ACCOUNT MAY BE INTERFERED WITH BY NUMEROUS FACTORS OUTSIDE OF TFS’ CONTROL. SOME STATES DO NOT ALLOW THE DISCLAIMER OF IMPLIED WARRANTIES, SO THE FOREGOING DISCLAIMERS MAY NOT APPLY TO EMPLOYER.

12. Assignment. This Agreement may not be assigned by a party without the prior consent of the other party, which shall not be unreasonably withheld or delayed, except that TFS may assign this Agreement in connection with its reorganization, a sale of its equity interests, or a sale of all or substantially all of its assets or business.

13. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original, and all of which, when taken together, shall constitute one and the same instrument. This Agreement may be executed by facsimile signature and facsimile signatures shall be fully binding and effective for all purposes and shall be given the same effect as original signatures.

14. Construction. Each party acknowledges that it has read this Agreement, understands it and, has had an opportunity to discuss this Agreement with counsel. Each party further agrees that the terms and provisions of this Agreement shall be interpreted simply in accordance with their fair meaning and not strictly or against any party. The section headings contained herein are for convenience purposes only and are not intended to define or limit the contents of said sections.

15. Binding Effect. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective heirs, administrators, personal representatives, executors, successors and

permitted assigns, all of whom are intended third party beneficiaries. The Services Parties are intended third party beneficiaries of Section 10, with rights to enforce such provision.

16. Amendments. TFS reserves the right, at its discretion, to change, modify, or amend this Agreement (each, an “Amendment”) at any time by posting such Amendment on the Website or otherwise providing notice of such Amendment to Employer; provided, however, such Amendment shall not become effective before the 10th day following such posting or notice unless otherwise agreed by Employer.

If Employer agrees to the terms and conditions below, click the “I have read and accept the Terms of Service” checkbox. Clicking the “I have read and accept the Terms of Service” checkbox represents (a) that the agent signing this Agreement has the authority to bind Employer and (b) Employer’s signature to this Agreement, which makes this a writing signed by Employer under applicable law and forms a legally binding contract between Employer and TFS.

If Employer does not agree to the terms and conditions below, click the “Back” button on Employer’s internet browser.