



Service Agreement

This Payroll Service Agreement (the "Agreement") (Rev. 5/16) is made and entered into by and between the business named below ("Company") and SurePayroll, Inc., a Delaware corporation with offices at 2350 Ravine Way, Suite 100, Glenview, IL 60025 ("Provider"). This Agreement contains the terms and conditions that govern the use of, and the terms and conditions upon which Provider will provide to Company, certain payroll processing, payroll tax service and other related payroll services (collectively the "Services"). The Services may be accessed via Provider's Internet Website through www.surepayroll.com ("Website") or by means of an application on an electronic communications device ("App") through which the Services may be accessed (the Website or App at which the Services are offered is referred to as the "Service Site").

Company Information

Company's Legal Name _____

Business Address _____

City _____ State _____ Zip _____

Company DBA (Doing Business As) _____ Federal Employer ID _____

Please select one: Company is a ☐ Sole Proprietorship ☐ General Partnership ☐ Limited Partnership ☐ Non Profit
☐ Corporation ☐ Limited Liability Company ☐ Other _____

Authorized Officer's Name _____ Title _____

Email Address _____ Phone Number _____

Social Security # 601763370 Fax Number _____

Company agrees that Provider is not rendering legal, tax, accounting, or investment advice in connection with the Services, nor is Provider a fiduciary of Company, a fiduciary of any Company benefit plan offered for the benefit of Company's employees, or the employer or joint employer of Company's employees. Provider will not be responsible for Company's compliance with, nor will Provider provide legal or other financial advice to Company, with respect to federal, state, or local statutes, regulations, or ordinances, including, but not limited to, the Fair Labor Standards Act or any wage and hour laws. Company agrees to comply with any and all applicable federal, state, and local laws or ordinances.

Company represents and warrants that it possesses full power and authority to enter into this Agreement, and has read and agrees to the terms and conditions set forth in section 1- 19 of this Agreement. Company has caused this Agreement to be executed (by signature, electronic signature or by clicking to approve) by the individual listed below, and by execution hereof (whether by signature, electronic signature, or by clicking to approve), such individual represents that he or she has the authority to execute this Agreement on behalf of Company and bind Company to this Agreement.

Company understands that this Agreement may be considered an application for credit and hereby authorizes Provider to investigate and verify the identity, bank account and credit of the Company and/or its principals, including vendor references, bank account and funding status, and history (collectively "Company's Credit"). Provider's performance of the Services under this Agreement is subject to approval of Company's Credit. Company acknowledges that Provider may engage a third party to investigate Company's Credit and authorizes Provider to share with the third party any Company data, including Company Confidential Information, as may be needed to investigate Company's Credit. Company further agrees that Provider is not liable for the actions or inactions of such third party, including but not limited to any unauthorized use or disclosure of Company data.

Authorized Officer's Signature _____ Date _____

1. SERVICES. Provider will provide Company the Services in accordance with this Agreement. A minimum of five (5) business days before the initial payroll processing date, Company shall submit the completed and executed documents Provider requires for providing the Services, which documents shall include any federal, state or local powers of attorney required by Provider, all local, state, or federal tax identification numbers for payroll taxes to be processed through Provider, Company account information and any additional information requested by Provider. Company acknowledges that Provider may be required to obtain documents necessary to verify the identity of Company pursuant to applicable federal and/or state statutes or regulations. Subsequent to the initial payroll processing, Company will complete and execute any renewals, amendments or replacements of the aforementioned documents which Provider deems necessary. Provider will not commence any of the Services until Provider receives all documents necessary to begin each of the Services and notifies Company of the date Provider will commence each of the Services ("Service Effective Date"). Company acknowledges that each of the Services may have separate Service Effective Dates. **Until the Service Effective Date, Company will continue to provide for itself the Services requested of Provider. Except as specifically set forth herein, Provider assumes no responsibility for Services prior to the Service Effective Date or for Services declined by Company.**

2. TAX SERVICES. In order for the Services to be instituted, Company must submit accurate wage and payroll information to Provider during the enrollment process which includes, but is not limited to, that which is used to calculate and pay employee payroll, track Company-defined employee benefits, pay payroll taxes to applicable taxing agencies in compliance with the laws and regulations of such taxing agencies, produce payroll tax returns and W-2 statements and print checks on Company's account (if applicable) ("Payroll Information"). Payroll Information must be reconciled by the Company with Company's payroll tax returns for the current calendar year and Company's wage and payroll tax information for the current quarter. Thereafter, Company shall timely and accurately (a) update all Payroll Information as necessary to reflect changes and (b) respond with additional information requested from time to time by Provider. It is Company's responsibility to timely submit complete and accurate information to Provider in connection with the Services. Any penalty or interest incurred due to inaccurate or untimely information provided by Company will be the sole responsibility of Company. Company further agrees to hold Provider harmless from such liability. Provider, at its option, may decide not to file Company's payroll tax returns, pay Company's payroll taxes or otherwise process Company's payroll if there are any unresolved problems with any information requested by Provider or submitted by Company.

- A. Company will deposit immediately any FICA, Federal, State and Local withholding liabilities incurred to date (before commencing the payroll processing with the Provider).
- B. Company will submit any payroll returns to tax agencies (state, federal, and/or local) that are now due or will be due prior to the Service Effective Date.
- C. Company will cancel any prior payroll service or leasing agency and inform them how to handle the taxes according to this documentation (described in A and B above).
- D. Company will request a refund of withheld but un-deposited FUTA (federal unemployment) and SUI (state unemployment) for the current quarter.
- E. Company will notify Provider immediately of any deposited current quarter FUTA and/or SUI.
- F. Effective with the first check date, Provider will assume responsibility for payment of Company's FUTA and SUI liabilities incurred in the calendar quarter of the first check date. Provider's responsibility is contingent upon Provider successfully collecting funds required for payment of Company's FUTA and SUI liabilities from Company. Provider will debit the Company's account with the first payroll processing for FUTA and SUI liabilities incurred in the current quarter previous to the first check date with the Provider. The debit amount will be calculated based on the current quarter wage detail provided by the Company during implementation.
- G. Company acknowledges that it is obligated to timely provide Provider with (i) accurate employer identification numbers ("EIN") for all taxing authorities (federal, state and/or local) for payroll taxes to be processed through Provider ("Payroll Taxes"); and (ii) copies of all tax notices or other communications from all taxing authorities regarding Payroll Taxes ("Tax Notices"). Provider will commence collection of funds for the payment of Payroll Taxes as of the first check date but is not responsible for remittance of Payroll Taxes or associated Payroll Tax returns until a reasonable time after accurate EIN information is received. Company is subject to additional Fees for payrolls processed without accurate EIN information and is subject to termination for cause if accurate EIN information is not received within thirty (30) days of the Service Effective Date. Provider is not responsible for any penalties, interest, late payment and/or other damages resulting from Company's failure to timely provide accurate information and/or Tax Notices for Payroll Taxes.

3. LIMITED SOFTWARE LICENSE. During the term of this Agreement, Provider hereby grants Company a limited, nonexclusive, royalty free license to access (through Provider's Service Site only) and utilize Provider's application service provider software (the "Software") solely for the purpose of facilitating Provider's collection of the Payroll Information and other information Provider needs to furnish Services to Company. Provider will not transfer legal title or physical possession of any Software to Company. The parties acknowledge that the Software is of no intrinsic value to Company, and no portion of any of the Fees related to the Services or charges paid by Company to Provider hereunder shall be treated as a royalty for the limited license that Provider is granting to Company hereunder.

4. CONFIDENTIALITY OF SOFTWARE. Company acknowledges that the Software contains valuable trade secrets and confidential information owned by Provider or third parties (collectively "Confidential Information"). Company agrees that Company, its employees, and its agents will not, directly or indirectly (i) sell, lease, assign, sublicense, or otherwise transfer; (ii) duplicate, reproduce or copy; (iii) disclose, divulge, or otherwise make available to any third party; (iv) use, except as authorized by this Agreement; (v) decompile, disassemble, or otherwise analyze for reverse engineering purposes the Software or Confidential Information; or (vi) download any Software or Confidential Information onto Company's servers, to duplicate or make copies of any Software, or to use the Software for any purpose other than as described in this paragraph. Company will take appropriate action with Company's employees and agents to satisfy its obligations under this Agreement with respect to the use, protection, and security of Confidential Information. Company will notify Provider immediately of any unauthorized use or disclosure of Confidential Information and will cooperate in remedying such unauthorized use or disclosure.

5. COPYRIGHT. Provider owns all rights, title and interest, including but not limited to, copyright, patent, trade secret, and all other intellectual property rights, in the Software and any changes, modifications, or corrections to the Software. If Company is ever held or deemed to be the owner of any copyright rights in the Software or any changes, modifications, or corrections to the Software, Company hereby irrevocably assigns to Provider all such rights, title, and interest. Company agrees to execute all documents necessary to implement and confirm the letter and intent of this section. Company warrants to Provider that it (i) has title or is authorized to use any symbol, logo, or mark uploaded by Company or Company's agents or printed on Company's checks (collectively "Company Material"); and (ii) has full right and authority to use Company Material, and such use does not violate any other party's rights.

6. ACH ORIGINATION.

- A. Company will provide Provider with all necessary Company Information pertaining to paying Company's employees at least (2) banking days prior to payroll check date. Company acknowledges that Company is responsible for any delayed remittance of wages, taxes, and additional processing Fees incurred as a result of its failure to provide Company Information timely.
- B. On or before Company's payroll direct deposit, payroll tax deposit, check date or other applicable due date, Company will approve, release, cancel, amend and/or submit Payroll Information ("Payment Order") to Provider thereby authorizing Provider to create and transmit ACH credit or debit entries ("Entry" or "Entries") necessary to process the Payment Order. Company authorizes Provider to process Electronic Funds Transfer transactions ("EFT") for such amounts as are necessary to pay (i) direct deposits and payroll taxes that are specifically identified on the Payroll Preview Summary; (ii) any fees or charges associated with the Services ("Fees"); (iii) any debit, correcting or reversing Entry initiated pursuant to this Agreement which is later returned to Provider; and (iv) any other amount that is due and owing under this Agreement or in connection with the Services (collectively, "Amounts Due"). Amounts withdrawn will be held by Provider in one or more account(s) ("Payroll Tax Account") until such time as those payments are due, and no interest will be paid to the Company on these amounts.
- C. For all EFTs required by this Agreement, Company (i) will execute all documentation needed by Provider to originate EFTs and to verify availability of funds in Company's bank account and (ii) agrees that the funds representing the Amounts Due will be on deposit in Company's bank account in collectible form and in sufficient amount on the day Provider's EFT is to be presented ("Funding Deadline"). All EFTs are performed in compliance with the National Automated Clearing House Association operating rules ("NACHA"). Company agrees (i) to follow NACHA, as they are amended from time-to-time and assumes the responsibilities of an initiator of EFTs; (ii) that it will not initiate any EFT that violates any law; and (iii) that Provider may identify Company to banks involved in the EFT. Company further agrees that it will notify Provider, pursuant to applicable NACHA and federal regulations, if funding for Company's payroll is received from a foreign financial agency and of any employees with non-U.S. addresses.
- D. Provider may reject any Payroll Information or Payment Order which does not comply with the requirements of this Agreement or NACHA or with respect to which Company's Account does not contain sufficient available funds to pay for the Entry. Provider will have no liability to Company by reason of the rejection of any Payroll Information or Payment Order. If Company requests that Provider repair an Entry on Company's behalf, Provider may endeavor to do so; provided, however, that Provider will not be liable either for making the requested repair or for its failure to make any requested repair.
- E. Company will have no right to cancel, amend or reverse an Entry or Payment Order received by Provider after it has been approved by Company's Payroll Approver and submitted to Provider. However, if Company's request to cancel, amend or reverse an Entry or Payment Order complies with the security procedure, Provider may use reasonable efforts to act on it but will have no liability if the cancellation, amendment or reversal is not effected. Company will reimburse Provider for any expenses, losses or damages Provider may incur in effecting or attempting to honor Company's request.
- F. Provider will process the Payment Order and Entries in accordance with its then current processing schedule, provided (i) the Payment Order is approved by Company and received by Provider no later than Company's applicable cut-off time on a business day and (ii) the ACH Operator is open for business on that business day. If Provider receives approved Payment Order after Company's cut-off time, Provider will not be responsible for failure to process the Payment Order on that day. If any of the requirements of clause (i) or (ii) of this Subsection are not met, Provider will use reasonable efforts to process the Payment Order and transmit the Entries to the ACH Operator with the next regularly scheduled file created by Provider which is on a business day on which the ACH Operator is open for business.
- G. Company expressly acknowledges that Provider does not intentionally or knowingly engage in or support International ACH Transactions ("IATs"), as defined in NACHA. Company represents and warrants that (i) the direct funding for the Entries originated by Provider on behalf of Company does not come from or involve a financial agency office that is located outside the territorial jurisdiction of the United States; (ii) Company will not instruct Provider to create, originate or transmit Entries that are IATs or Entries using a Standard Entry Class Code (as defined in NACHA) other than IAT if such Entries are required to be IATs under NACHA; and (iii) Company will not engage in any act or omission that causes or results in Provider creating, originating or transmitting an IAT or a payment that should have been categorized as an IAT pursuant to NACHA. Provider may, in its sole discretion, temporarily or permanently suspend providing the Services to Company, without liability, if Provider has reason to believe that Company has breached any of foregoing representations and warranties in this paragraph. Company shall indemnify and hold harmless Provider from any losses incurred by Provider in connection with Company's breach of the foregoing representations and warranties in this paragraph.

7. PAYMENT BY WIRE TRANSFER OR OTHER METHOD. Provider may require payment of Fees or Amounts Due through a wire transfer or other method. If required, Company agrees to provide Provider with all information necessary to confirm receipt of the payment prior to the Funding Deadline. Company acknowledges that Company is responsible for any delay in remittance of wages or taxes if Provider is unable to confirm receipt of funds prior to the Funding Deadline.

8. REFUND/ADJUSTMENT/OVERPAYMENT/COMPANY DEFAULT

- A. If Company does not have sufficient funds in Company's Account to pay Amounts Due under this Agreement at the time required, or if Company refuses to pay, Provider may (i) debit the Payroll Tax Account or any account at Company's financial institution or any Affiliate owned in whole or in part by Company to pay Amounts Due, (ii) refuse to pay any unremitted payroll taxes, in which case the payroll tax liability will become the sole responsibility of Company, (iii) refuse to perform further services, (iv) immediately terminate this Agreement without notice and declare all Amounts Due immediately due and payable, (v) assess insufficient funds Fees, (vi) apply any balances it is holding for Company, including, but not limited to, unremitted payroll taxes, to Amounts Due owed to Provider or its affiliates, and/or (vii) initiate an EFT to Company's bank account for any past due Amounts Due. Company acknowledges that Company is responsible for any delay in remittance of wages, garnishments, or taxes if Provider is unable to confirm receipt of funds prior to the Funding Deadline.
- B. Company agrees to promptly reimburse Provider for all advances or overpayments made by Provider and to pay interest on the advances and/or all past due Amounts Due at a rate of 1.5% per month (18% per annum) or the maximum allowable by applicable law, until paid. Company is responsible for the costs of collection of Amounts Due including, but not limited to, attorneys' fees and costs. Provider may, in its sole discretion, commence an action within the County of Monroe, State of New York, or in any other court of competent jurisdiction for any monies due and owing from Company to Provider.
- C. In the event Provider remits an overpayment of payroll taxes, Provider may, at its sole discretion, advance funds to Company. In the event Provider advances overpayment funds to Company, Company agrees that it will reimburse Provider for the overpayment within the sooner of five (5) days of (i) receiving the overpayment amount from the taxing authority; (ii) being notified that the overpayment amount will be applied to an outstanding tax liability of Company; or (iii) the Agreement is terminated by either party.

- 9. SERVICE FEES AND CHARGES.** Company agrees to pay Provider for the Services in accordance with the Fees set forth in the fee schedule which is accessed by logging into Company's payroll application by means of the Website or App ("Fee Schedule"). Company will also reimburse Provider for sales, use and similar taxes arising from this Agreement that federal, state or local governments may impose.
- 10. CHANGES TO THE SERVICES.** Provider reserves the right to change the terms, conditions, and Fees for the Services at any time. Provider will endeavor to, but shall not be obligated to, provide thirty (30) days prior notice of any material change, including Fees. Notice may be provided in writing, electronically or via the Website or the display accessible by means of the App. If Company does not wish to be bound by such change, it may discontinue using and terminate the Services before the change becomes effective. If Company continues to use the Services after the change becomes effective, it will be bound by the change. Company has the responsibility to assure that Company's address, including any electronic address(es), and account information in Provider's records is accurate. The timing of an advance notice of change may be shortened when permitted or required by law.
- 11. VERIFICATION OF DATA.**
- A. Provider will notify Company via electronic communication or by other means when all data necessary to begin the Services has been received, the enrollment process has been completed and of the Service Effective Date. Company shall then, prior to submitting its first payroll, review for completeness and accuracy all Payroll Information posted for Company's review on the specified portion of the Service. Company must correct incorrect or missing Payroll Information, either by itself or by notifying Provider in the manner and time period specified in the electronic communication. Company shall be fully responsible for the accuracy of all information supplied by it and/or approved by it at any time, including, without limitation any IRS or other penalties and/or interest arising therefrom.
 - B. Company agrees that by submitting each payroll (including the first payroll), Company has: (i) reviewed and approved all Payroll Information, (ii) represented and warranted to Provider that no Payroll Information submitted to Provider will result in Entries that would violate the sanctions program of the Office of Foreign Assets Control of the U.S. Treasury or any other applicable laws or regulations, (iii) waives and releases any claim against Provider arising out of any errors in the Payroll Information which Company has not itself corrected or has not requested Provider to correct, and (iv) understands and acknowledges that Provider may rely upon the Payroll Information provided and that Provider will not be responsible for errors that result from provider's reliance on Company Information. Company acknowledges that any subsequent request for corrections will be considered special handling and additional Fees may be charged. Final audit responsibility rests with Company and Provider will not have any responsibility for verifying the accuracy of any Payroll Information or other data Company provides or directly inputs via the Service Site or any other method.
- 12. SECURITY PROCEDURE.**
- A. Company will designate and authorize one or more individual users of the Services with authority to act on behalf of and to bind the Company ("Payroll Contacts"). The Payroll Contacts will access the Services by, at a minimum, entering a confidential user ID and password created by the Payroll Contact in accordance with Provider's instructions. Company will determine the scope of each Payroll Contacts' authority. At least one Payroll Contact will have authority to approve, release, cancel, amend, and/or submit Payroll Information and Payment Orders.
 - B. Company acknowledges that any Payroll Information, Payment Orders or other instructions or information ("Company Information") communicated to Provider by telephone, electronic mail, facsimile, through the Service Site, or other means of communication will be deemed to have been fully authorized by Company and Company shall be fully responsible for the accuracy of such Company Information. Notwithstanding such deemed authorization, Provider may in its sole discretion refuse to accept or act upon any such instructions.
 - C. Company is solely responsible for timely advising Provider, in writing, of any change in Payroll Contacts. Provider will have a reasonable time after receipt of notice to act on it.
 - D. Provider will not be responsible for errors that result from Provider's reliance on Company Information or Payment Orders received and verified by Company.
 - E. Any person identified by Company in this Agreement as a Payroll Contact, via the Service Site or in any certification, notice or other communication delivered to Provider may receive information, communications and notices regarding the Services, and is authorized to transact all business, make all agreements and sign and deliver all documents in connection with the Services.
 - F. Provider may rely on the bank account number and/or the identification number of the financial institution set forth in a Payment Order and shall not be obligated to verify the name associated with it. Provider may in its sole discretion refuse to accept or may return any Payment Order.
 - G. Company is solely responsible for (i) safeguarding all of Company's passwords, usernames, logins or other security features used to access the Services; (ii) Company's use of its account under any usernames, logins or passwords, (iii) ensuring that the use of Company's account complies fully with the provisions of this Agreement, and (iv) any unauthorized access, or use, of Company's account caused by Company's actions or inactions, including, without limitation, its failure to safeguard account access. Company agrees to immediately notify Provider of any actual or suspected unauthorized use of its account, and acknowledges that Company is responsible for damages resulting from Company's failure to timely notify Provider. Provider reserves the right to prevent access to the Services should Provider have reason to believe the confidentiality of the security procedure or the confidentiality of the user IDs and passwords have been compromised. Company acknowledges and agrees that Provider is not liable to Company, Company's employees or any other third-party for any consequences, losses, or damages resulting from unauthorized access or use of Company's account as set forth in this section.
 - H. Company acknowledges that Provider has implemented the security procedures described above for the purpose of verifying the authenticity of Payment Orders, and not for the purpose of detecting errors in Payment Orders. Company has reviewed various security procedures including the foregoing and has determined that the security procedures designated above constitute a commercially reasonable method of providing security against unauthorized Payment Orders which meets Company's requirements, given the size, type and frequency of the Payment Orders it will issue to Provider. Company is solely responsible for implementation of an information security program appropriate to safeguard account access and which is consistent with all applicable federal, state and/or local statutes or regulations.
- 13. TERM; TERMINATION.** Subject to Company's compliance with the terms of this Agreement and satisfactory completion of the enrollment process, Provider will commence provision of the Services to the Company on or after the Service Effective Date. Provider may, at its discretion, decline to offer the Services to Company in the event that the enrollment process is not satisfactorily completed, Provider is unable to verify satisfactory credit of the Company and/or its principals, as set forth in paragraph 2.G, or for other lawful business reasons. The Services will continue until such time as Company or Provider gives thirty (30) days' prior written notice, unless Provider terminates for cause. Provider may immediately terminate this Agreement if (i) Provider, in its sole discretion, determines that a material adverse change has occurred in the financial condition of Company; (ii) Company fails to have sufficient funds on the Settlement Date; (iii) Provider determines, in its sole discretion, that any federal, state or local legislation, regulatory action, or judicial decision adversely affects its interests under the Agreement; (iv) Company is in violation of a material provision of the

Contract Documents, including but not limited to, the payment of Amounts Due or Fees; (v) Company chooses not to accept a change in any term or condition of this Agreement; (vi) Company misrepresents any data or information required by Provider in connection with the Services or at any other time; or (vii) Company becomes subject to receivership, bankruptcy or is insolvent. The termination of the Services or this Agreement will not affect Company's or Provider's rights with respect to transactions which occurred before termination or Company's payment obligations of Fees and/or Amounts Due.

- 14. GOVERNING LAW AND ARBITRATION.** The Agreement and all aspects of the relationship between Provider and Company shall be governed exclusively by the laws of the State of Illinois without regard to, or application of, its conflict of laws, rules, and principles, except for the arbitration agreement contained herein which shall be governed exclusively by the Federal Arbitration Act, 9 U.S.C. section 1 et seq. (the "FAA"). Except as provided herein, any dispute arising out of, or in connection with, the Agreement will be determined only by binding arbitration in Chicago, Illinois, in accordance with the commercial rules of the American Arbitration Association. Arbitrable disputes include, without limitation, disputes about the formation, interpretation, applicability, or enforceability of this Agreement. A separate neutral arbitrator who shall be a practicing attorney or retired judge having experience with and knowledge of payroll and online commerce law must be selected and appointed for each dispute. Any dispute arising under the Agreement will be brought within two (2) years of when the claim accrued. The arbitrator will not be authorized to award exemplary or punitive damages, or any damages excluded in the Limit of Liability provision. The arbitrator will follow the law and will give effect to any applicable statutes of limitation. The parties agree that the prevailing party in arbitration, and any subsequent judicial proceeding to enforce an arbitration award, will be awarded costs and attorneys' fees (including in-house counsel fees) and that an arbitration award may be entered as a judgment in any court having jurisdiction over either party to the Agreement. The parties will not be permitted to bring, or participate in, and the arbitrator will not have any authority or jurisdiction to hear or decide, any claims brought as any type of purported class action, coordinated action, aggregated action, or similar action or proceeding. Each party must only bring claims against each other in their individual capacity.
- 15. LIMIT OF LIABILITY.** Provider's sole liability and Company's sole remedy for Provider's breach of the Agreement shall be (i) Provider will remit to the appropriate payee the funds received from Company and/or (ii) Provider will reimburse Company or pay directly to the appropriate taxing authority any penalties resulting from Provider's breach. Provider can only be held liable for breach of the Agreement and will not be held liable for (i) any negligent act or omission by Provider; (ii) the negligence of any other person or entity, including, but not limited to, Company and its employees or agents, or any person or entity that provides services in connection with or as a result of Provider's performance of its obligations under the Agreement; (iii) any loss, claim or expense arising from any information provided or modified by Company; or (iv) Company's breach of NACHA. Provider will, under no circumstances, be liable for any special, indirect, incidental, consequential, or punitive damages, including lost profits incurred by Company pursuant to this Agreement or by the transactions contemplated by it, however caused, on any theory of liability (including contract, tort, or warranty), or as a result of Provider's exercise of its rights under the Agreement, even if Provider has been advised of the possibility of such damages. Except as provided above, in no event will Provider's or any other Indemnified Party's liability for any act or omission relating to the Services exceed the total charge for services provided for the six (6) month period immediately preceding such act or omission by the Provider.
- 16. INDEMNIFICATION.** Company will indemnify, defend and hold Provider and its respective officers, directors, affiliates, and employees harmless from any and all claims, costs, attorneys' fees (including in-house counsel fees), and expenses resulting from or arising in connection with (i) a Company default; (ii) the use, misuse, reproduction, modification, or unauthorized distribution of Software; (iii) Company's breach of NACHA; or (iv) Company's breach of any warranty set forth in the Agreement.
- 17. COMPANY CONFIDENTIAL INFORMATION.** "Company Confidential Information" will mean all information disclosed or otherwise made available by Company to Provider that is marked confidential or is of the nature that a reasonable person would identify it as being confidential, and the name, social security number, date of birth, address, bank, and/or wage information of Company and Company's employee provided to Provider by Company. Provider will use reasonable care to prevent the disclosure of such Company Confidential Information to any unauthorized person or entity. Provider may disclose Company Confidential Information to its employees, affiliates, subsidiaries, agents, and contractors to (i) perform or offer Services; (ii) offer additional products or services; (iii) integrate third-party services into the Services; (iv) perform analysis to determine Company's qualification to receive services; and (v) collect Amounts Due, and may disclose Company's payment experiences with Provider to credit reporting agencies and supply vendor references on Company's behalf. Provider may also disclose Company Confidential Information (i) to its attorneys, accountants, and auditors; and (ii) pursuant to federal, state, or local law, regulation, court order, legal process, or governmental investigation. In the event of any compromise or security breach resulting in the disclosure or possible disclosure of Company Confidential Information, Provider will notify Company as legally required of such compromise or breach. The obligations set forth in this section will not apply to any Company Confidential Information that (i) Company has agreed is free of any nondisclosure obligations; (ii) at the time of disclosure was free of any nondisclosure obligations; (iii) is independently developed by Provider or that Provider lawfully received, free of any nondisclosure obligations, from a third party having the right to furnish such Company Confidential Information; (iv) is or becomes available to the public without any breach of this Agreement or unauthorized disclosure; or (v) Provider, its employees and agents release based on a reasonable belief that Company has consented to such disclosure. Company acknowledges and agrees that to the extent Company was referred to Provider by a third party, Provider may disclose statistical information regarding the Company's use of the Services to such third party and its affiliates for marketing and analysis purposes.
- 18. THIRD-PARTY SERVICES.** At Company's option, Company can integrate certain third-party services into the Services. These third-party services are not provided by Provider. Company agrees to hold harmless and release Provider from any liability relating to Company's use of third-party services or integration of the Services with third-party services. Company's ability to use third-party services may be limited according to the third-party's terms and conditions. When Company integrates with a third-party service, Company authorizes Provider to share any Company data, including Company Confidential Information, as may be needed by the third-party to provide the third-party services. Provider is not liable for any disclosure of Company Confidential Information by any such third-party. If Company does not opt to integrate third-party services into the Services, the provisions of this Section shall not apply.
- 19. GENERAL TERMS AND CONDITIONS.**
- A.** To assure that Company's inquiries are handled promptly, courteously and accurately, Provider may monitor and/or record telephone conversations and electronic communications between Company and Provider without additional prior notification to Company or Company's employees, and Company will so advise Company's employees who communicate with Provider by telephone or electronic means.
 - B.** Neither use of the Services nor anything contained in this Agreement relieves Company of Company's obligations under federal or state laws or regulations to retain records relating to the data contained in Provider's files.
 - C.** This Agreement, the documents set forth in Section 1, the Fee Schedule, any user guides (online or otherwise) and any addendum to this Agreement (hereinafter called "Contract Documents") constitute the entire agreement between Provider and Company regarding the Services and supersedes all previous understandings and agreements between the parties for the Services provided, whether oral or written. Neither

party will be responsible for any delay or failure to perform obligations specified in the Agreement due to causes beyond the party's reasonable control. Company acknowledges that there have been no representations or warranties made by Provider or Company that are not set forth in the Contract Documents.

- D. Provider may at any time use agents, affiliates and/or independent contractors ("Contractors") to process Entries or provide all or any portion of the Services. Provider will be responsible for the acts and omissions of its Contractors in the same manner as if Provider had performed the portion of the Services itself and any claims against its Contractors or Provider (with respect to the acts or omissions of its Contractors) shall be subject to the limitations of liability set forth in Sections 2 and 18D above to the same extent as if Provider had performed the portion of the Services itself. However, Provider will not be deemed to be the agent of, nor responsible for the acts or omissions of any other person or entity, including, without limitation, any Federal Reserve Bank, ACH, Internet service provider or transmission or communications facility, any receiver or receiving depository financial institution (including, without limitation, the return of an Entry by such receiver or receiving depository financial institution), and no such person shall be deemed Provider's agent.
- E. Company is solely responsible for the maintenance and routine review of computing and electronic system usage records (i.e. log files) and the security of its own data, data storage, computing device(s), other electronic systems, and network connectivity. Company will, at its own cost and expense, obtain, install and, at all times during its utilization of the Services, maintain in good working order all software, hardware and other equipment necessary for it to perform in accordance with this Agreement. In the event of any failure of such software, hardware or other equipment, Company will deliver to Provider all data which it would otherwise have provided that is necessary for Provider to perform Provider's obligations in connection with the Services. Provider is not liable for any damages caused by Company's breach of any portion of this provision.
- F. Sections 1-19 will survive termination of the Services.
- G. **Assignment.** Company shall not assign this Agreement without the prior written consent of Provider. The provisions of this Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns. Provider may assign this Agreement at any time in its sole discretion.
- H. **Electronic Transmission.** This Agreement, and any amendments hereto, by whatever means accepted, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as if it were an original signed version thereof delivered in person. At the request of Provider, Company shall execute or re-execute original forms of this Agreement and shall deliver them to Provider. Neither party hereto shall argue that a contract was not formed hereunder based on either (i) the use of electronic means to deliver a signature or to indicate acceptance of this Agreement or (ii) the fact that any signature or acceptance of this Agreement was transmitted or communicated through electronic means; and each party forever waives any related defense.
- I. **Further Assurances.** Company agrees to do such further acts and things, and to execute and deliver such additional documents agreements and instruments, as Provider may at any time and from time to time request in connection with the administration of the Services and with the administration or enforcement of this Agreement.

SUREPAYROLL

Deposit Account Verification

Customer Confirmation:

This information is in regards to the account that SurePayroll will be using to retrieve the funds for your payroll. Please confirm or correct the information below, **fill in any blank spaces** and sign under **Account Authorization only**.

Name of Depositor (your company name)

Bank/Financial Institution

Company's Legal Name

ABA Routing Number

Account Number

Address of Depositor (your company address)

Name of Bank Contact or Personal Banker

City State Zip

Bank Phone Number

X _____
Authorized Signer (printed name)

Bank Fax Number

Account Authorization:

The above-mentioned financial institution is authorized to share and confirm the information set forth above regarding our firm's deposit account.

X _____
Customer Signature

Title

Customer Printed Name

Date Signed

The section below is for internal use only! Do not fill this section out.

Bank Confirmation (To be completed by authorized bank personnel only):

The above-mentioned financial institution is authorized to share and confirm the information set forth above regarding our firm's deposit account

Account Number

Bank Personnel Signature

ABA Routing Number

Bank Personnel Printed Name

Date

Please fax this form back to SurePayroll at 847-676-5136.

If you should have any questions, please contact us at 877-954-7873.

Office Use: AE: _____