

PAYROLL SERVICE AGREEMENT

THIS PAYROLL SERVICE AGREEMENT (the "Agreement") is entered into by and between _____, (the "Employer") and PayUSA, Inc., ("PayUSA").

WITNESSETH:

WHEREAS, the Employer desires to utilize PayUSA to provide payroll services.

WHEREAS, PayUSA has entered into an agreement regarding its use of electronic transactions using the Automated Clearing House System (ACH), in which it agrees to be bound by the National Automated Clearing House Association ("NACHA") Operating Rules that are in effect at any given time as part of its provision of payroll services. By signing this agreement, Employer hereby agrees to also be bound by those rules.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Preparing Payroll.** In order to pay the Employer's employees, Employer shall provide PayUSA, at a minimum, the employee's name and address, social security number, amount of payment, date of payment, and identification of account into which the funds are deposited to pay the Employer's employees and the funds to make said payment.
2. **Credit History.** PayUSA is authorized to request and obtain a credit, financial or identity history (and any follow up reports) for Employer and or its employees from any reporting agency or company selected by PayUSA. This agreement or a copy thereof shall serve as authorization for the release of this information to PayUSA.
3. **Source of Funds.** The Employer shall designate a commercial checking account (the "Payroll Account") and shall maintain therein available funds in an amount sufficient to cover all payroll taxes, the Employer's net payroll as reported to PayUSA and PayUSA's costs and fees. PayUSA's fees are subject to review and adjustment in July of each year
4. **Availability of Funds.** PayUSA requires that all funds scheduled for electronic transfer from Employer be deposited into the Payroll Account in sufficient time to insure that PayUSA debits clear. PayUSA will debit the total amount of funds from Employer two business days before the check date.
5. **Authorization.** Employer authorizes PayUSA to: (a) initiate debit or credit entries to its Payroll Account for the applicable charges related to the services provided by PayUSA; (b) send or transmit to the Bank, a credit entry to the account of an employee to effect a payment from Employer to the employee; and/or (c) send or transmit a debit entry to the employee's account in order to effect a payment from the employee to Employer or cover any shortfall.

6. **Electronic Transfers.** Upon receipt of the electronic transaction the amounts shall be applied to the appropriate accounts. Should the Employer's bank for any reason be unable to or unwilling to complete the transaction, PayUSA shall have the right to hold Employer's money in escrow until all payments made by PayUSA on behalf of the Employer have cleared and will be relieved of any responsibility to process that payroll until good funds are available to process the payroll.

7. **Corrective Entries.** Employer hereby authorizes PayUSA to make corrective reversal entries in accordance with the operating rules of NACHA to correct such errors as may arise. "Error" as contemplated by this provision shall include, without limitation, circumstances under which credit entries to the employee would result for whatever reason in an overdraft upon the account of Employer or PayUSA's Bank.

8. **Record Retention.** The Employer shall retain the original or a copy of each payroll authorization for two (2) years after termination of this Agreement. This Agreement and the performance by PayUSA of its services hereunder, shall not 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. **NSF Occurrence.** Employer hereby agrees that for each debit return or non-sufficient funds occurrence ("NSF"), Employer will be charged PayUSA's then current daily NSF charge (currently \$100) plus any and all fees and costs associated with the NSF, including, without limitation, PayUSA's attorney's fees and costs of collection and those fees, costs and damages set forth in 11 below. PayUSA may: a. reverse any deposit or payment made to an employee or other person or entity; b. freeze any other funds without notice to the Employer or employee; c. revoke Employer's ACH privileges; and/or terminate this agreement immediately and without prior notice upon any such event. In the event of a debit return or NSF, the Employer is required to WIRE the funds directly to the processor or account(s) identified by PayUSA within forty eight (48) hours of notification by PayUSA. Additional charges imposed by the Employer's bank are separate from PayUSA charges and are the Employer's responsibility.

10. **Damage Limitation.** Other than as specifically set forth in this Agreement, PayUSA 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 its acts or omissions or those of the Employer or its employees or any third parties, including, but not limited to, any courier service, the ACH, 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. PayUSA makes no representations or warranties except as expressly stated herein and all other warranties express or implied are hereby specifically excluded. In no event shall PayUSA be liable for incidental or consequential damages even if PayUSA has been advised of the possibility of such damages. In no event shall PayUSA's total liability to the Employer or its employees pursuant to any claim arising out of or relating to this Agreement or the transactions covered hereby (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.

11. **Remedies.** The undersigned representative (“Signer”) is duly authorized to sign this agreement on behalf of the Employer. The Employer and the Signer hereby agree to be jointly and severally liable for the terms of this Agreement and for any and all amounts owing including, without limitation, dishonored checks, debit checks, ACH debits, NSF fees and costs, PayUSA fees and costs and any and all obligations of PayUSA hereunder together with interest thereon at the rate of 2% per month, court costs, professional fees and costs incurred by attorney’s, accountant’s, expert’s and witnesses and triple damages. The Employer and Signer shall indemnify and hold PayUSA harmless from all liabilities, losses, costs and expenses (including attorney’s fees) incurred by PayUSA and caused by or arising out of (a) any breach of any provision of the Agreement or contained in any other agreement related hereto; (b) any failure by the Employer to comply with any provision of applicable federal or state laws, regulations, rules or operating letters, including, but not by way of limitation, The Electronic Fund Transfer Act, Regulation E promulgated thereunder, and all amendments thereto; (c) any action taken by PayUSA 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, or the disbursement of any sums which PayUSA is authorized to withhold. Notwithstanding subparagraph (c), PayUSA shall have the right to refuse the reversal of any electronic direct deposit to the account of an employee.

12. **Capacity.** The Employer warrants and represents that there are no provisions of any law, whether federal, state or local, or of its certificate of incorporation, by-laws 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. **Power of Attorney.** Employer hereby appoints PayUSA as attorney in fact to represent it before and/or submit records to federal, state, and local taxing authorities and any insurance provider with respect to payrolls and taxes. PayUSA will be the Reporting Agent, affirmed by the Employer’s signature, over the tax accounts and taxing authorities. The Employer hereby authorizes PayUSA to debit electronically or otherwise the Employer-designated account for payroll taxes and/or associated fees.

14. **Entire Agreement.** The parties agree that this Agreement is the entire agreement between the parties and replaces and supersedes any prior agreements, discussions and understandings of any manner between the parties. Any amendment, modification, change or supplement to this Agreement by PayUSA shall be binding upon the Employer. This Agreement shall be deemed drafted by PayUSA and Employer and no rule of construction shall be invoked against either party respecting the authorship hereof. All captions and headings herein are for convenience only and shall not be construed as interpretive or a part of any provision hereof. This agreement may be signed electronically, by facsimile and in counterparts.

15. **Termination.** PayUSA may immediately terminate this agreement for cause. For purposes of this agreement “cause” shall mean a material breach of the terms and conditions of this

Agreement by the Employer. Except as otherwise set forth herein, this Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other, provided, however, the Employer's duty to maintain sufficient funds in its Payroll Account shall continue until Employer's employees and PayUSA are paid in full for all payrolls run by PayUSA. Upon termination, the Employer will notify its employees thereof or will take other appropriate and reasonable action to apprise its employees of such termination or to arrange for a substitute service.

16. **Assignment.** This Agreement shall not be assigned or otherwise transferred by the Employer to any other person, corporation or entity without the prior written consent of PayUSA, which consent may be granted or withheld at PayUSA's sole discretion.

17. **Dispute Resolution.** Any litigation by Employer, Signer or PayUSA for any reason, shall be in the Court of Common Pleas of Montgomery County, PA or the US District Court for the Eastern District of Pennsylvania. The applicable rules and regulations of both PayUSA and NACHA are incorporated herein and made a part hereof.

18. **Third Parties.** Unless otherwise set forth herein, under no circumstances shall Employer's employees be construed as third party beneficiaries hereof.

19. **Independent Contractors.** PayUSA and the Employer agree that each is acting independently of the other, they are not joint venturers and that neither is an agent of the other.

20. **Optional Services.** Provided Employer's account with PayUSA is in good standing and subject to the terms noted above, Employer may select the following additional services:

[Check those requested]

Direct Deposit. (requires tax filing service below)

Each employee who desires to utilize electronic transfer of funds will provide Employer with a Direct Deposit Authorization Agreement. The Direct Deposit Authorization Agreement will authorize Employer to utilize PayUSA to initiate paperless electronic transfers of sums due or payable at employee's bank where such account is maintained and to initiate paperless debits or corrective reversal entries for sums due to the Employer or PayUSA for erroneous or NSF transaction(s). The Employer shall 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.

Tax Filing Service.

PayUSA will provide:

- a. Preparation and filing of all associated tax returns.

b. Correspondence with the taxing agencies concerning returns and/or deposits submitted by PayUSA.

c. PayUSA shall not be responsible for tax deposits, interest charges and/or penalties or any other cost or fee that arose prior to or after the term of this agreement or where the Employer failed to provide PayUSA with written notice of any claim within thirty days of its occurrence, where Employer failed to timely notify PayUSA of its tax rate changes or where Employer caused said charge, penalty or cost or where it's account is not in good standing.

d. PayUSA's tax service shall commence with the first live pay date processed by PayUSA.

e. Provided Employer's funds are deposited in an impound account at PayUSA's Bank, PayUSA will electronically disburse taxes to the respective taxing authorities based on the information provided in the Tax Liability Report. PayUSA is not responsible to deposit taxes due when Employer funds are not on deposit in the impound account. Monies overpaid to taxing authorities on behalf of the Employer will be applied to subsequent tax payments when possible. If the Employer has no future tax obligation, then PayUSA will seek a refund for the Employer from the taxing authority. If the credit is applied to a prior delinquency by the taxing authority, the Employer is responsible for the underpaid tax and any interest and/or penalty assessed. Employer agrees to notify PayUSA of any refunds received from taxing authorities.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have caused this Agreement to be executed as of the day and year first written above.

EMPLOYER: _____

PayUSA, Inc.

Signature: _____

Karen L. Duncan
Vice President

By: _____
(Please Print Name)

Title: _____

Dated: _____

Address: _____

EIN: _____