

## **PAYROLL SERVICE AGREEMENT**

THIS PAYROLL SERVICE AGREEMENT (this “Agreement”) is entered into by and between \_\_\_\_\_, (the “Employer”) and The Payroll Department, Inc., (“TPD”) as of the date of the last signature on this Agreement below. Within this Agreement the Employer and TPD each are on occasion referred to separately as “Party” and are referred to on occasion collectively as “Parties.” “You” and “your” refer to the Employer and “we,” “us” and “our” refer to TPD.

### **RECITALS:**

WHEREAS, the Employer desires to utilize TPD to provide payroll services; and

WHEREAS, TPD 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.

### **AGREEMENT:**

NOW, THEREFORE, in consideration of the promises and covenants hereinafter contained and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Employer and TPD agree as follows:

1. **Incorporation of Recitals.** The above-stated Recitals are true, correct and accurate, and are made part of this Agreement.
2. **Definitions.** The following terms shall have the following meanings as used in this Agreement:
  - A. **Gross Payroll.** The Employer’s Gross Payroll includes all wages earned by the Employer’s employees during a given pay period before any deductions are made. Gross Payroll means the total amount of money the Employer pays out for its employees during a given pay period including Net Payroll, Payroll Taxes, and Other Wage Deductions.
  - B. **Net Payroll.** The Employer’s Net Payroll for a period is its Gross Payroll minus deductions for Payroll Taxes, Other Wage Deductions and Employer Matching Benefit Payments. Net Payroll means the money that the Employer’s employees receive from the Employer after deducting the required and agreed withholdings.
  - C. **Payroll Taxes.** Payroll Taxes mean FICA (Social Security and Medicare), FIT (Federal Income Tax), SIT (State Income Tax), any local taxes that may apply which varies by State, FUTA (federal unemployment taxes) and SUTA (state unemployment taxes).

D. **Other Wage Deductions.** Other Wage Deductions means any other required or agreed withholding such as insurance premiums, retirement plan contributions, employee stock purchase plans, wage garnishments, uniforms, child support, dues, job-related expenses, etc.

E. **Employer Matching Benefit Payments.** Employer Matching Benefit Payments means any matching payments made by the Employer for the benefit of its employees for employment benefits including retirement plans.

3. **Preparing Payroll.** In order to pay the Employer's employees, Employer shall provide TPD, at a minimum, each employee's name and address, social security number, amount of payment, date of payment, and—if the Employer's employees are to be paid by direct deposit—identification of account into which the funds are deposited to pay the Employer's employees and the funds to make said payment. It is the Employer's responsibility to substantiate and authorize the time records for its employees. TPD will not audit, examine, or review these time records. If an amount appears unusual or out of the ordinary TPD may, but is not required to, call it to the Employer's attention. The Employer agrees that TPD has no responsibility to discover any errors, irregularities, or fraud in the Employer's time records. It is also the Employer's responsibility—and not TPD's responsibility—to determine employee versus independent contractor status. The Employer is responsible to notify TPD if any of the Employer's employees perform work in a state other than the state in which the Employer has its principal place of business. If requested TPD will help the Employer determine if it has a filing requirement in states other than the state of the Employer's principal place of business. However, the Employer is responsible for the legal process of registering its business with any state and maintaining its business in good standing with that state.

4. **Credit History.** TPD is authorized to request and obtain a credit, financial or identity history (and any follow up reports) for the Employer and or its employees from any reporting agency or company selected by TPD. This agreement or a copy thereof shall serve as authorization for the release of this information to TPD.

5. **Source of Funds and Payment.** The Employer shall designate a commercial checking account (the "Payroll Bank Account") and shall maintain therein available funds in an amount sufficient to cover all of the Employer's Gross Payroll and TPD's Costs and Fees. **IT IS IMPERITIVE THAT THE EMPLOYER MAINTAIN SUFFICIENT FUNDS IN THE PAYROLL BANK ACCOUNT ON THE DATE OF PAYROLL TO COVER NET PAYROLL, PAYROLL TAXES, TPD'S FEES AND ANY OTHER PAYMENTS AGREED TO BE MADE BY TPD AS AN ADD-ON SERVICE INCLUDING WAGE DEDUCTION PAYMENTS AND EMPLOYER MATCHING BENEFIT PAYMENTS.** TPD shall pay—to the extent the Employer has provided sufficient funds—the Net Payroll and any other agreed payments on the date of payroll and shall deposit the Payroll Taxes and TPD's Fees and Costs into escrow until those sums become due and payable. We can accept payment through direct debit up to two days prior to the date of the payroll. We can also accept payment by check, wire transfer, or certified funds of the Employer at the time your payroll is picked up from our office. On or within two (2) days of the date of the payroll, the Employer shall provide TPD with access to the amounts that will cover the following:

Gross Payroll, including the Payroll Taxes and TPD's fees. The Payroll Taxes and TPD's fees will be deposited in escrow and paid by TPD when due.

6. **Availability of Funds.** TPD requires that all funds scheduled for electronic transfer from Employer be deposited into the Payroll Bank Account in sufficient time to insure that TPD debits clear. **TPD will debit the total amount of funds from Employer within two business days before the check date.**

7. **Authorization.** The Employer authorizes TPD to: (a) initiate debit or credit entries to its Payroll Bank Account for the applicable charges related to the services provided by TPD; (b) send or transmit to the Bank a credit entry to the account of an employee to effect a payment from the 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 the Employer or cover any shortfall.

8. **Processing Payroll.** Once the Employer's payroll order is received by TPD, TPD will process the Employer's payroll on the Payroll Bank Account, and TPD will provide the Employer with regular paychecks and check stubs for each of the Employer's employees. Direct deposit is also available for all of the Employer's employees at no additional cost. Each employee who desires to utilize electronic transfer of funds will provide the Employer with a Direct Deposit Authorization Agreement. The Direct Deposit Authorization Agreement will authorize Employer to utilize TPD 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 TPD 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. TPD will also provide the Employer with payroll reports with each payroll that is processed. It is the Employer's responsibility to maintain and protect these documents for possible future use, including potential examination by any government or regulatory agency.

9. **Service to Employees.** As a service to the Employer's employees, TPD will keep copies of their check stubs for a period of two (2) years. If, for any reason, a copy of a check stub is needed, the employee can request a copy of his or her check stub for a fee of \$45.00 per stub. Also, as a service to your employees, TPD will keep copies of their W-2 forms for a period of two (2) years. If, for any reason, a copy of a W-2 is needed, the employee can request a copy of his or her W-2 for a fee of \$45.00 per form. Identification will be necessary and a cash payment will be required.

10. **Payroll Taxes and Reports.** From the Employer's funds TPD will pay all payroll taxes for the Employer, prepare and file any related payroll reports, and, within 30 days of the end of each quarter-end, TPD will provide the Employer with a letter from an independent, third-party confirming that all payroll taxes have been paid on the Employer's behalf in a timely manner. At the end of the year, TPD will prepare and file W-2 and W-3 forms on the Employer's behalf. At your request, we will also prepare and file Forms 1099 and 1096 for you, for an additional fee. After January 15th but before January 28th of each calendar year, we will provide to you each employee's copy of Form W-2. We will NOT release these to anyone else without written permission from you to do so.

11. **Consequences of Termination of this Agreement before Year End.** IF THIS AGREEMENT IS TERMINATED PRIOR TO COMPLETING A CALENDAR YEAR, there will be an additional fee for year-end reports and W-2 processing. It is the Employer's responsibility to change all addresses with all government entities to direct correspondence to the appropriate address. TPD will retain in its office any misdirected correspondence for a period of thirty (30) days after the termination of this Agreement. If the Employer will no longer be obligated to pay wages to employees, it is the Employer's responsibility to close all payroll accounts with all government agencies.

12. **Government Payroll Correspondence.** If the Federal and/or State Government entities send you correspondence regarding your payroll, TPD will respond to those inquires for the Employer at no additional cost as long as you are a current client in good standing. It is necessary that you forward this information to us in a timely manner so that we can respond appropriately. We will not be responsible for penalties and/or interest for late responses from any government entities.

13. **Additional TPD Services.** TPD can deduct funds from the Employer's employees' wages for most requests including Other Wage Deductions (as defined above). We can also record deductions and maintain retirement accounts you may have for your employees. As an add-on service we will forward the Wage Deductions for each employee to the proper administrator or return the funds to you for you to forward to the proper administrator. Upon written request, TPD will directly forward to your tax preparer any documents he or she may need. These documents are also available through the portal. If necessary and requested, TPD can confirm the citizenship status of any of the Employer's employees. However, TPD is not responsible for any employee/employer conduct resulting from the citizenship status reports.

14. **State Audits.** As you may be aware, there are times when the Indiana Department of Workforce Development ("IDWD") will audit an employer's books, searching for people that were paid as subcontractors, when they should have been paid as employees. In the event the Employer is so audited, TPD will supply the IDWD with any and all items it needs relating to payroll, and we will answer any questions pertaining to the payroll reports provided by our office. At your request, for our normal hourly fee, TPD will host the audit at its office instead of the Employer's place of business.

15. **Additional Required Documentation.** In addition to this Agreement, the Employer must return to us a completed "Client Information Sheet" for your company and a completed "New Hire Worksheet" for each of the Employer's employees. All payroll orders must be made by fax, email, telephone, or through remote payroll entry allowing TPD at least two (2) hours to process the order if paper checks are being processed. If the payroll is set up for direct deposit processing, TPD *must* have the payroll order no later than noon two (2) business days prior to the payroll date. Also, because TPD respects your privacy, we will not speak with any of your employees directly regarding payroll related matters. All communications, representations, and requests must be made by the Employer, on behalf of your employees, or by someone you designate, in writing, as able to represent the Employer in regard to payroll.

16. **TPD Rates and Fees.** TPD's fee will be based on our standard rates, which will vary according to the frequency of payroll, the number of payroll checks produced, and the add-on services requested. If the employer doesn't process payroll for an entire month there will be a maintenance fee of Fifty Dollars (\$50.00) to process the necessary payroll tax forms for the clients company. Our fees are withdrawn from the escrow account and paid to TPD on a monthly basis. If the Employer fails to provide sufficient funds to allow TPD to pay its fees from the escrow account then the Employer shall be in material breach of the Agreement. In the event that any client enters into a contract with TPD and submits the startup paperwork and business is either terminated prior to any payrolls being processed or failure to process within 60 days of setup, the fee will be two hundred fifty dollars (\$250) for all setup work which will be applied to any fees in the future if the client begins the payroll process.

17. **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, TPD shall have the right to hold Employer's money in escrow until all payments made by TPD on behalf of the Employer have cleared and TPD will be relieved of any responsibility to process that payroll until good funds are available to process the payroll.

18. **Corrective Entries.** The Employer hereby authorizes TPD 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 TPD's Bank.

19. **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 TPD 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.

20. **NSF Occurrence.** The Employer hereby agrees that for each debit return or non-sufficient funds occurrence ("NSF"), the Employer will be charged TPD's then current daily NSF charge (0.5% of the overdue monies or the maximum allowed by law) plus any and all fees and costs associated with the NSF, including, without limitation, TPD's attorney's fees and costs of collection and those fees, costs and damages set forth in paragraph 20 below. TPD 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 the Employer's ACH privileges; and/or D) 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 TPD within forty eight (48) hours of notification by TPD. Additional charges imposed by the Employer's bank are separate from TPD charges and are the Employer's responsibility. If any overdue monies are not in TPD's office at the end of the business day, TPD will stop all work until the Employer's account is brought current and TPD shall not be liable to the Employer for any damages that occur as a result of TPD ceasing to render services. At year-end, if the Employer's account is not current with our office, we will not release any payroll documents to you including, but not limited to, W-2's.

21. **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, TPD fees and costs and any and all obligations of TPD hereunder together with interest thereon at the rate of 0.5% per day (or the maximum allowed by law), court costs, TPD’s attorney’s fees, its professional fees and costs incurred by TPD’s attorney’s, accountant’s, expert’s and witnesses and triple damages. The Employer and Signer shall indemnify and hold TPD harmless from all liabilities, losses, consequential damages, costs and expenses (including attorney's fees) incurred by TPD 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; and C) any action taken by TPD 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, or the disbursement of any sums which TPD is authorized to withhold. Notwithstanding subparagraph C), TPD shall have the right to refuse the reversal of any electronic direct deposit to the account of an employee.

22. **Damage Limitation.** Other than as specifically set forth in this Agreement, TPD will not be liable for any damage or loss (including, but not limited to, liabilities, costs, attorney’s fees, professional fees 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. TPD 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 TPD be liable for incidental or consequential damages even if TPD has been advised of the possibility of such damages. In no event shall TPD’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.

23. **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 or organization, by-laws, shareholder agreements, operating agreement 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.

24. **Power of Attorney.** Employer hereby appoints TPD 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. TPD will be the Reporting Agent, affirmed by the Employer's signature, over the tax accounts and taxing authorities. The Employer hereby authorizes TPD to debit electronically or otherwise the Employer- designated account for payroll taxes and/or associated fees.

25. **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 TPD shall be binding upon the Employer. This Agreement shall be deemed drafted by TPD 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.

26. **Termination.** TPD 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 TPD are paid in full for all payrolls run by TPD. 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.

27. **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 TPD, which consent may be granted or withheld at TPD's sole discretion.

28. **Dispute Resolution.** All disputes under this Agreement shall be resolved, if not by the Parties, then by the Court; all such disputes shall be resolved in the Hendricks County, Indiana, state courts. This Agreement shall be controlled by Indiana law. The Parties agree that specific performance of the requirements shall be an available remedy to the Parties for a breach of this Agreement. The applicable rules and regulations of both TPD and NACHA are incorporated herein and made a part hereof.

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

30. **Independent Contractors.** TPD and the Employer agree that each is acting independently of the other, they are not partners nor joint-venturers and that neither is an agent of the other.

31. **Optional Services.** Provided Employer's account with TPD is in good standing and subject to the terms noted above, Employer may select additional services from TPD at TPD's standard rates and fees.

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:** \_\_\_\_\_

**The Payroll Department, Inc.**

**Signature:** \_\_\_\_\_

\_\_\_\_\_

**By:** \_\_\_\_\_

**Teresa M. Ray  
President/Owner**

**(Please Print Name)**

**Title:** \_\_\_\_\_

**Dated:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**EIN:** \_\_\_\_\_



