


# Service Agreement

Company Is A:  
Please Select One: 

- Sole Proprietorship   
  General Partnership   
  Limited Partnership   
  Non Profit Corporation  
 Corporation   
  Limited Liability Company   
  Other (specify) \_\_\_\_\_

Company DBA (Doing Business As) \_\_\_\_\_ Federal Employer ID Number \_\_\_\_\_

Company's Legal Name \_\_\_\_\_ Number of Employees \_\_\_\_\_

Business Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Preferred First Payroll Date \_\_\_\_\_

Company Payroll Administrator \_\_\_\_\_ Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Company Payroll Approver \_\_\_\_\_ Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_  
(if different from Company Payroll Administrator)

Company Principal (signing this agreement) \_\_\_\_\_ Email Address \_\_\_\_\_ Phone Number \_\_\_\_\_ Fax Number \_\_\_\_\_  
(if different from Company Payroll Approver)

Company's Bank Account for Payroll:

Bank Name \_\_\_\_\_ Routing Number \_\_\_\_\_ Account Number \_\_\_\_\_

This Payroll Service Agreement (the "Agreement") is made and entered into by and between the business named above ("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 "Service"). The Service may be accessed via Provider's Internet Website through [www.surepayroll.com](http://www.surepayroll.com) ("Website") or by means of an application on an electronic communications device ("App") through which the Service may be accessed (the Website or App at which the Service is offered is referred to as the "Service Site").

- SERVICE.** Provider will provide Company the Service in accordance with this Agreement. A minimum of ten (10) business days before the initial payroll processing date, Company shall submit the completed and executed documents Provider requires for providing the Service, which documents shall include any federal, state or local powers of attorney required by Provider, Company account information and any additional information requested by Provider. Subsequent to the initial payroll processing, Company will complete and execute any renewals, amendments or replacements of the aforementioned documents which Provider deems necessary.
- TAX SERVICES; LIABILITY.** In order for the Service to be instituted, Company must submit accurate wage and payroll information to Provider during the enrollment process. The wage and payroll information must be reconciled 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 wage and 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 submit complete and accurate information to Provider in connection with the Service. Any penalty or interest incurred due to inaccurate 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. Provider's sole liability and Company's sole remedy for Provider's negligent failure to perform the payroll tax portion of the Service shall be (i) Provider will remit the payroll taxes received from Company to the appropriate taxing authority and (ii) Provider will reimburse Company or pay directly to the appropriate taxing authority any penalties resulting from such negligent error or omission by Provider.



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- Company will deposit immediately any FICA, Federal, State and Local withholding liabilities incurred to date (before the payroll processing with the Provider).
- Company will submit any payroll returns to tax agencies (state, federal, and/or local) that are now due.
- 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).
- Company will request a refund of withheld but un-deposited FUTA (federal unemployment) and SUI (state unemployment) for the current quarter.
- Company will notify Provider immediately of any deposited current quarter FUTA and/or SUI.
- Effective with the first check date, Provider will assume responsibility for FUTA and SUI liabilities incurred in the calendar quarter of the first check date. 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.

**3. LIMITED SOFTWARE LICENSE.** Provider hereby grants Company a limited, nonexclusive, royalty free license to access and utilize Provider's application service provider software (the "Software") solely for the purpose of facilitating Provider's collection of the wage and payroll information and other information Provider needs to furnish Services to Company. Company shall access the Software solely through the Provider's Service Site. Provider will not transfer legal title or physical possession of any Software to Company. Company shall not be entitled to download any Software 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 also may not license, sublicense, or otherwise transfer any rights in the Software to another person or entity without the prior written permission and continued control of Provider. The parties acknowledge that the Software is of no intrinsic value to Company, and no portion of any of the fees related to the Service 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. ACCOUNT DEBITING.**

A. On or prior to Company's payroll direct deposit and/or payroll tax deposit date or other applicable settlement or due date, Company authorizes Provider to initiate debit entries to Company's account specified above ("Company's Account") at the depository financial institution the Routing Number of which is given above ("Depository"), and to debit Company's Account in such amounts as are necessary to (i) fund Company's direct deposits, (ii) pay any fees or charges associated with the Service, including, without limitation, finance charges, (iii) pay Company's payroll taxes, (iv) pay any debit, correcting or reversing entry initiated pursuant to this Agreement which is later returned to Provider, and (v) pay any other amount that is owing under this Agreement or in connection with the Service. This authorization is to remain in full force and effect until Provider has received written notice from Company of its termination in such time and such manner as to afford Provider and Depository a reasonable opportunity to act upon it. Company will maintain in Company's Account as of the applicable settlement date and time immediately available funds sufficient to cover all credit entries Company originates through Provider. Company's obligation to pay Provider for each credit entry matures at the time Provider transmits or otherwise delivers the credit entry to the Automated Clearing House ("ACH") or gateway operator and is unaffected by termination of the Service. Provider may set off against any amount it or an Affiliate owes to Company in order to obtain payment of Company's obligation as set forth in this Agreement. Company acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law. Amounts withdrawn for payroll taxes will be held by Provider at Provider's financial institution (the "Payroll Tax Account") until such time as those payments are due to the appropriate taxing agencies, and no interest will be paid to the Company on these amounts.

B. If Company does not have sufficient funds in Company's Account to pay disbursements, fees, payroll taxes or any other 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 Provider's financial institution or any Affiliate owned in whole or in part by Company to pay disbursements, fees or charges, payroll taxes, or other 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, and/or (iv) immediately terminate this Agreement. Provider may assess finance charges on any amounts owing and unpaid ten (10) days after demand. Finance charges are assessed at a rate of 1.5% per month (18% per annum) or the highest amount permitted by law, whichever is less. Provider may recover from Company any costs including, without limitation, reasonable attorneys' fees and expert witnesses' fees Provider may incur in connection with any termination of this Agreement or collection of amounts due hereunder.

**5. SERVICE FEES AND CHARGES.** Company agrees to pay Provider for the Service 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.

**6. CHANGES TO THE SERVICE.** Provider reserves the right to change the terms, conditions, and fees for the Service 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 Service before the change becomes effective. If Company continues to use the Service 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.

## 7. VERIFICATION OF DATA.

A. Provider will notify Company via electronic communication or by other means when all data necessary to begin the Service has been received and the enrollment process has been completed. Company shall then, prior to submitting its first payroll, review for completeness and accuracy the Payroll Information (as hereinafter defined). For purposes of this Agreement, "Payroll Information" shall mean all information posted for Company's review on the specified portion of the Service Site including, but 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). Company must correct incorrect or missing Payroll Information, either by itself or by notifying Provider in the manner specified in the electronic communication and within the time period specified therein. Company shall be fully responsible for the accuracy of all information supplied by it and/or approved by it, 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): (i) Company has approved all Payroll Information, (ii) Company has 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) Company has waived and released 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) any subsequent request for corrections will be considered special handling and additional fees may be charged. Final audit responsibility rests with Company. Provider will not have any responsibility for verifying the accuracy of any data Company provides or directly inputs via the Service Site or any other method.

C. Provider may permit, but shall not be obligated to permit Company's Payroll Approver, a designated Company representative and/or designated Company Administrator to communicate with Provider by telephone, electronic mail or other means about the Service. Provider has implemented security procedures for the purpose of verifying the identity of Company's Payroll Approver, Company representative and/or designated Company Administrator (as applicable), including the use of unique security identification numbers generated by the Service Site and other security protocols. Company acknowledges that any such telephone communication or electronic mail communication or other means of communication will be made available for Company's benefit and convenience, that the security procedures instituted by Provider are commercially reasonable methods of providing security, that any Payroll Information, Entries or other instructions communicated to Provider will be deemed to have been fully authorized by Company and Company shall be fully responsible for the accuracy of such information including, without limitation, any IRS or other penalties and/or interest arising therefrom; and that, notwithstanding such deemed authorization, Provider may in its sole discretion refuse to accept or act upon any such instructions.

## 8. SECURITY PROCEDURE.

A. Company will designate and authorize one or more individual users of the Service with authority to act on behalf of and to bind the Company (designated as "Company's Payroll Approver," "Executive" and "Administrator"), which authorized individuals will access the Service by entering a confidential user ID and password created by following the instructions provided on the a specified portion of the Service Site and which will entitle them, depending on their designation (whether as Company's Payroll Approver, Executive or Administrator), to have authority to review, modify and/or approve on behalf of Company. Company's Payroll Approver will approve and submit the Payroll Information thereby authorizing Provider to create and transmit ACH credit or debit entries ("Entries," each, an "Entry") necessary to process Company's payroll and payroll tax transactions, by entering his or her confidential user ID and password which he or she has created by following the instructions provided on the specified portion of the Service Site.

B. Company acknowledges that Provider has implemented the security procedures described above for the purpose of verifying the authenticity of an instruction approving, releasing, cancelling or amending the Payroll Information used to create Entries (each, a "Payment Order") to be originated by Provider for the benefit of Company, 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 and best meets Company's requirements, given the size, type and frequency of the Payment Orders it will issue to Provider.

C. Company will, and will cause its employees to, take reasonable steps to maintain the confidentiality of the security procedure and the user IDs and passwords and related instructions provided by Provider. If Company believes or suspects that any such user IDs and passwords or related instructions have been known or accessed by unauthorized persons, Company will immediately notify Provider in a manner affording Provider a reasonable opportunity to act on the information, and Company acknowledges that failure to immediately notify Provider could result in loss of funds and unauthorized access to confidential information concerning Company and its employees. Provider reserves the right to prevent access to the Service should Provider have reason to believe the confidentiality of the security procedure or the confidentiality of the user IDs and passwords have been compromised.

D. Company will be bound by any Payment Order received and verified by Provider in compliance with the designated security procedure, and Company shall indemnify and hold Provider harmless from and against any loss suffered or liability incurred by, or arising from, the execution of a Payment Order in good faith and in compliance with such security procedures.

E. If a Payment Order describes the receiver inconsistently by name and account number (i) payment may be made on the basis of the account number even if it identifies a person different from the named receiver or (ii) Provider may in its sole discretion refuse to accept or may return the Payment Order. If a Payment Order describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. If a Payment Order identifies a non-existent or unidentifiable person or account as the receiver or the receiver's account, Provider may in its sole discretion refuse to accept or may return the Payment Order.

F. Company will promptly notify Provider in writing of the identity of each person authorized to receive information regarding the security procedure (each singly or in the aggregate, an "Authorized Person"), including but not limited to Company's Payroll Approver, and of any change in an Authorized Person. Provider will have a reasonable time after receipt of a notice to act on it.

## 9. ACH ORIGINATION.

A. The Service will enable Company by using the Service Site to enter the Payroll Information and to approve and submit it to Provider for creation, formatting and transmission of Entries in accordance with the Rules (as defined below). Provider may reject any Payroll Information or Entry which does not comply with the requirements in this Agreement or the Rules or with respect to which Company's Account does not contain sufficient available funds to pay for the Entry. If any Payroll Information or Entry is rejected, Provider will make a reasonable effort to notify Company promptly so that Company may correct such Payroll Information or request that the Provider correct the Entry and resubmit it. A notice of rejection will be effective when given. Provider will have no liability to Company by reason of the rejection of any Payroll Information or Entry, the fact that notice is not given at an earlier time than that provided for in this Agreement or for any loss resulting from Provider's failure to provide notice. 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 for its failure to make any requested repair.

B. Company will have no right to cancel or amend any Payroll Information received by Provider after it has been approved by Company's Payroll Approver and submitted to Provider. However, if Company's request complies with the security procedure, Provider may use reasonable efforts to act on it prior to transmitting the Entries to the ACH or gateway operator, but will have no liability if the cancellation or amendment is not effected. Company will reimburse Provider for any expenses, losses or damages Provider may incur in effecting or attempting to effect Company's request.

C. Except for Entries created from Payroll Information that have been reapproved and resubmitted by Provider in accordance with the requirements of this Agreement, Provider will have no obligation to retransmit a returned Entry to the ACH or gateway operator if Provider complied with the terms of this Agreement with respect to the original Entry.

D. Provider will process the Payroll Information and Entries in accordance with its then current processing schedule, provided (i) the Payroll Information 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 is open for business on that business day. If Provider receives approved Payroll Information after Company's cut-off time, Provider will not be responsible for failure to process the Payroll Information 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 Payroll Information and transmit the Entries to the ACH with the next regularly scheduled file created by Provider which is on a business day on which the ACH is open for business.

E. Origination, receipt, return, adjustment, correction, cancellation, amendment and transmission of Entries must be in accordance with the Operating Rules of the ACH in which Provider is a participant and, with respect to credit entries which constitute Payment Orders, Article 4A of the Uniform Commercial Code as adopted in the state whose law governs this Agreement, as both are varied by this Agreement and the other Contract Documents (as defined below), and as both are amended from time to time (the "Rules"). Company agrees that it will not submit Payroll Information that 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. Company acknowledges that it has had an opportunity to review and agrees to comply with and be bound by the Rules. Company will be responsible for promptly obtaining all future amendments.

F. Any credit Provider gives to Company is provisional until Provider receives final settlement and the Entry for which credit was given is deemed to be finally paid as provided in this Agreement, the Rules and all laws, rules and regulations governing any aspect of the Entry, including the laws, rules and regulations of the country to which the Entry was sent. If Provider does not receive final settlement, it is entitled to a refund from the credited person and Company will not be deemed to have paid that person.

G. At Company's request, Provider will make a reasonable effort to reverse an Entry, but will have no responsibility for the failure of any other person or entity to honor Company's request. Company agrees to reimburse Provider for any expenses incurred in attempting to honor such request.

H. Company expressly acknowledges that Provider does not intentionally or knowingly engage in or support International ACH Transactions ("IATs"), as defined in the Operating Rules of the National Automated Clearing House Association ("NACHA Rules"). 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 the NACHA Rules) other than IAT if such Entries are required to be IATs under the NACHA Rules; 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 the NACHA Rules. Provider may, in its sole discretion, temporarily or permanently suspend providing the Service 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.

I. Company acknowledges that it is the originator of each Entry and that under the Rules, Provider makes certain warranties with respect to each Entry. Company agrees to reimburse Provider for any loss Provider incurs, including its reasonable attorneys' fees and legal expenses, as the result of a breach of a warranty made by Provider unless the breach resulted solely from Provider's own gross negligence or intentional misconduct.

J. Company acknowledges that under the Rules, Provider indemnifies certain persons. Company agrees to reimburse Provider for any loss Provider incurs, including its reasonable attorneys' fees and legal expenses, as the result of the enforcement of an indemnity, unless enforcement resulted solely from Provider's own gross negligence or intentional misconduct.

10. 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 Service to the Company. Provider may, at its discretion, decline to offer the Service 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 and/or for other lawful business reasons. The Service will continue until such time as Company or Provider gives thirty (30) days' prior written notice, unless termination is for cause. Provider may immediately terminate this Agreement upon notice to Company if Company is in violation of a material provision of the Contract Documents, including but not limited to, the payment when due of any fees, charges, or payroll taxes, or if Company chooses not to accept a change in any term or condition of this Agreement or Company misrepresents any data or information required by Provider in connection with the Service or at any other time. Provider may immediately terminate this Agreement without notice to Company if Company files, or has filed against it, a petition under the U.S. Bankruptcy Code or a similar state or federal law. The termination of the Service or this Agreement will not affect Company's or Provider's rights with respect to transactions which occurred before termination.

11. ALTERNATIVE DISPUTE RESOLUTION. Notwithstanding any other provision in this Agreement, if either Company or Provider have any unresolvable dispute, controversy or claim, whether founded in contract, tort, statutory or common law, concerning, arising out of or relating to this Agreement or the Service, including any claim regarding the applicability, interpretation, scope or validity of this arbitration clause and/or this Agreement (a "Claim") and upon the demand of either party, it will be settled by individual (not class or class-wide) binding arbitration administered by the American Arbitration Association (AAA) in accordance with the then current Commercial Financial Disputes Arbitration Rules, including any expedited procedures. A demand that a Claim be submitted to arbitration may be made before the initiation of any legal proceeding or within ninety (90) days following the service of a complaint, third-party complaint, cross-claim or counterclaim and if a party in a pending legal proceeding demands a Claim to be submitted to arbitration, the party initiating the action will immediately dismiss the legal proceeding and file the claim in arbitration. Arbitration hearings will be held in a mutually agreeable location or if no such agreement can be reached, the city where the dispute occurred. A single arbitrator will be appointed by the AAA and shall be a practicing attorney or retired judge having experience with and knowledge of payroll and online commerce law. The arbitrator will follow the law and will give effect to any applicable statutes of limitation. The prevailing party shall be entitled to an award of the costs and expenses of the arbitration, including attorneys' fees and expert witness fees. A judgment on the award may be entered by any court having jurisdiction. The parties agree and acknowledge that this agreement evidences a transaction involving interstate commerce and that the Federal Arbitration Act (Title 9 of the United States Code) shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this Agreement.

**JURY TRIAL WAIVER. COMPANY AND PROVIDER HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVE THE RIGHT TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION BASED HEREON OR RELATING TO THE SERVICE OR ANY OTHER DISPUTE OR CONTROVERSY BETWEEN THE PARTIES. FURTHER, COMPANY AND PROVIDER HEREBY AGREE THAT ANY LITIGATION WILL PROCEED ON AN INDIVIDUAL BASIS AND WILL NOT PROCEED AS PART OF A CLASS ACTION.**

## 12. GENERAL TERMS AND CONDITIONS.

A. Provider, its employees and agents will hold in strict confidence all data furnished by Company or produced by Provider under this Agreement; provided, however, that such parties will not be held liable if such data is released through other sources, or if Provider, its employees and agents release the data because of 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 Service to such third party and its affiliates for marketing and analysis purposes.

B. 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.

C. Company consents to and authorizes Provider at any time to obtain credit reports about Company and to report adverse credit information about it to others, including the Internal Revenue Service and state taxing authorities. The individual whose social security number is designated below consents to and authorizes Provider at any time to obtain credit reports on such individual for purposes of verifying identity and/or evaluating the creditworthiness of the such individual in connection with the Service and this Agreement.

D. In performing the Service, Company agrees that Provider is not acting in a fiduciary capacity for Company or its benefit. In addition, neither use of the Service 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 tape or disk files.

E. Company agrees to indemnify, defend and hold Provider and its agents, contractors, services providers and affiliates, including its and their respective directors, officers, employees, agents and contractors (each, an "Indemnified Party"), harmless against all liabilities, claims, demands, damages, losses, fines, judgments, disputes, costs, charges and expenses made by Company or others resulting from, arising out of or related to Provider's or any other Indemnified Party's provision of the

Service, reliance on information and data furnished by Company or resulting from activities that Provider or any other Indemnified Party undertakes at Company's request, or at the request of anyone Provider or any other Indemnified Party believes in good faith to be an authorized agent of Company including, without limitation, costs, reasonable attorneys' fees and expert witnesses' fees incurred in connection with such claims. Provider will have the right to disburse or withhold any sum which Provider is authorized to disburse or withhold. Company agrees that neither Provider nor any other Indemnified Party will be liable for any loss or damage caused by Provider's or any other Indemnified Party's delay in furnishing services, products and/or equipment. Except as provided in Section 2 above, in no event will Provider's or any other Indemnified Party's liability for any act or omission relating to the Service exceed the total charge for services provided for the six (6) month period immediately preceding such act or omission by the Provider. IN NO EVENT WILL PROVIDER OR ANY OTHER INDEMNIFIED PARTY HAVE LIABILITY FOR ANY CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT LOSS OR DAMAGES REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER THEORY OR FORM OF ACTION OR WHETHER PROVIDER OR ANY OTHER INDEMNIFIED PARTY KNEW OR SHOULD HAVE KNOWN OF THE LIKELIHOOD OF SUCH DAMAGES IN ANY CIRCUMSTANCES. COMPANY ACKNOWLEDGES THAT NEITHER PROVIDER NOR ANY OTHER INDEMNIFIED PARTY MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, THE SOFTWARE MATERIALS, THE ONLINE SERVICES, AND ANY EQUIPMENT OR SOFTWARE USED IN CONNECTION WITH THE SERVICE, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT.

F. 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 Service.

G. In the event of a dispute in connection with which either party to this Agreement employs counsel to pursue, protect or enforce any of the rights afforded that party by the terms hereof or by the terms of any related agreement or to defend against any claims of any other party hereto which arise out of this Agreement or any related agreement, in or out of court (including appellate courts), in arbitration, Bankruptcy cases and proceedings, or otherwise, the non-prevailing party in such dispute agrees to pay all attorneys' fees, expert witnesses' fees and costs actually incurred by the prevailing party in connection with such dispute and all such fees and costs actually incurred by the prevailing party in collecting or enforcing any settlement agreement, judgment, or arbitration award relating to such dispute.

H. Any person identified by Company in this Agreement, via the Service Sites or in any certification, notice or other communication delivered to Provider may receive information, communications and notices regarding the Service, and is authorized to transact all business, make all agreements and sign and deliver all documents in connection with the Services. If the identity of such a person changes, Company will promptly notify Provider in writing. Provider will have a reasonable time after receipt of a certification, notice or other communication to act on it.

I. Provider may at any time use agents and/or independent contractors ("Contractors") to process Entries or provide all or any portion of the Service. 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 Service 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 12E above to the same extent as if Provider had performed the portion of the Service itself. However, Provider will not be deemed to be the agent of, nor responsible for the acts or omissions of any other person, 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.

J. Company will, at its own cost and expense, obtain, install and, at all times during its utilization of the Service, 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.

K. Sections 2, 3, 4, 5, 9(B), 9(F), 9(H), 9(I), 9(J), 11, 12(A, D, E, G, I, K, L, M, N, O, and P) will survive termination of the Service.

L. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Illinois, without regard to the conflicts of laws principles thereof.

M. Consent to Jurisdiction. Company irrevocably submits (for itself and in respect of its property) to the jurisdiction of any state or federal court sitting in Cook County, Illinois, in any action or proceeding arising out of, or relating to, this Agreement and acknowledges and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Company also agrees not to bring any action or proceeding arising out of, or relating to, this Agreement in any other court. Company waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

N. 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.

O. 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.

P. 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 Service and with the administration or enforcement of this Agreement.

Company has caused this Agreement to be executed (by signature, electronic signature or by clicking to approve) on the date written below by a principal of Company, which by execution hereof (whether by signature, electronic signature, or by clicking to approve), such person represents that he or she is a principal of Company and has the authority to execute this Agreement on behalf of Company and bind Company to this Agreement.

**Agreed To and Accepted By:** Please sign and complete ALL the information below:

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company Principal's Social Security #

\_\_\_\_\_  
Company Principal's Signature

↑ Please sign ↑

\_\_\_\_\_  
Year Company Was Established

\_\_\_\_\_  
Company Principal's Printed Name

\_\_\_\_\_  
Company Principal's Time as Owner

\_\_\_\_\_  
Company Principal's Title (Owner, Officer, LLC Member, General Partner;  
Must also sign on back account shown on page 1)

\_\_\_\_\_  
Current Balance From Last Checking Statement

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
CPA Name

\_\_\_\_\_  
CPA Phone Number

\_\_\_\_\_  
CPA Email Address

