

PAYROLL SERVICE AGREEMENT

On this _____ day of _____, 2016, this PAYROLL SERVICE AGREEMENT (“Agreement”) is entered into by and between _____ (“EMPLOYER”) and **WE PAY Payroll Processing Company**, 3 W. Olive Street, Suite 205, Scranton, Pennsylvania (“WE PAY”) (hereinafter, EMPLOYER and WE PAY are collectively referred to as the “PARTIES”).

WITNESSETH:

WHEREAS, the EMPLOYER desires to retain WE PAY to provide payroll and tax preparation and payment services as more fully defined below; and

WHEREAS, WE PAY has agreed to be bound by the National Automated Clearing House Association (“NACHA”) Operating Rules as part of WE PAY’s provision of payroll services through the use of the Automated Clearing House System (“ACH”). WE PAY and EMPLOYER agree to be bound by the applicable NACHA Operating Rules which are incorporated herein and made a part hereof.

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

1. Payroll and Tax Reporting Services. EMPLOYER hereby authorizes WE PAY to prepare and complete payroll processing and tax preparation and payment services which include direct deposit and manual checks drawn on certain identified financial accounts, electronic and manual payment of all payroll taxes, and the electronic filing of quarterly and annual reports.

WE PAY will prepare and file all associated tax returns; prepare correspondence with the taxing authorities concerning returns and/or deposits submitted by WE PAY in EMPLOYER’s behalf; and provided that EMPLOYER’s funds are deposited in an impound account at WE

PAY's designated financial institution, WE PAY will electronically disburse taxes to the respective taxing authorities. WE PAY 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 WE PAY 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 WE PAY of any refunds received from taxing authorities.

2. Accuracy of EMPLOYER Information; EMPLOYER's Review of Reports.

All services provided by WE PAY will be based upon information provided to WE PAY by EMPLOYER, including proof of federal, state and local tax identification numbers, employee names, addresses, Social Security numbers, amounts of payments, dates of payment, identification of accounts into which funds are to be deposited to pay EMPLOYER's employees, payroll, benefits, human resources, and similar information provided by EMPLOYER, its employees or plan participants. EMPLOYER represents that it has verified the identity of each of its employees to whom it will make payments using WE PAY's services through appropriate documentation provided by each such employee (e.g. I-9 documentation) and EMPLOYER will maintain such documentation during the time in which each such employee receives payments. EMPLOYER shall be solely responsible for updating and maintaining the completeness and accuracy of all EMPLOYER information. Upon receipt of records and reports from WE PAY, whether electronically or otherwise, EMPLOYER will promptly review all such records and reports for validity and accuracy according to EMPLOYER's records and EMPLOYER agrees that it will promptly notify WE PAY of any discrepancies and, in any case, before WE PAY

distributes any paychecks, commences direct deposits, or otherwise relies on any such records or reports. To help prevent employee fraud, WE PAY strongly recommends that EMPLOYER have someone other than its designated payroll person review WE PAY's reports because a prompt and thorough review allows EMPLOYER to spot and correct errors, inaccuracies and inconsistencies.

3. Funding and Debit Indemnification. EMPLOYER shall indemnify and hold harmless WE PAY from and against any loss, liability, claim, damage or exposure arising from or in connection with any action, proceeding or claim made or brought against WE PAY by any bank with whom EMPLOYER maintains an account for any incorrect debit WE PAY may make to such account as a result of an error or omission by WE PAY in performing the Service, to the extent that the Loss would have been avoided if (i) EMPLOYER had not directed WE PAY to return the funds to an account or person other than the account which was originally debited and WE PAY was permitted to return the funds to the affected account or (ii) WE PAY's return of the funds was not rejected by the bank (e.g., due to account closure).

EMPLOYER shall be liable for debits properly initiated by WE PAY hereunder. EMPLOYER unconditionally promises to pay to WE PAY the amount of any unfunded payroll file (including any debit that is returned to WE PAY because of insufficient or uncollected funds or for any other reason), upon demand and interest thereon at the rate of 2% per month. Also, if any debit to an employee or other payee's account reversing or correcting a previously submitted credit(s) is returned for any reason, EMPLOYER unconditionally promises to pay the amount of such debit upon demand and interest thereon at the rate of 2% per month. EMPLOYER shall indemnify WE PAY against, any loss, liability, claim, damage or exposure arising from or in connection with any fraudulent or criminal acts of EMPLOYER's employees or payees.

4. **Availability of Funds.** EMPLOYER shall designate a commercial checking account ("Payroll Account") and shall maintain available funds therein in an amount sufficient to cover all payroll taxes, the EMPLOYER's net payroll as reported to WE PAY, and WE PAY's costs and fees as set forth in the Schedule attached hereto and incorporated herein. The amounts due to employees are to be held in the Payroll Account until EMPLOYER'S payroll check date when WE PAY shall draw checks or issue direct deposits therefrom payable to EMPLOYER'S employees. The amounts due for payroll taxes shall be held in a financial account established by WE PAY until these amounts are due to the appropriate taxing authorities. EMPLOYER agrees to provide WE PAY with payroll information at least two (2) banking days before each payroll check date or EMPLOYER shall incur an additional processing fee of \$150.00. WE PAY requires that all funds scheduled for electronic transfer from EMPLOYER be deposited into the Payroll Account in sufficient time to insure that debits by WE PAY clear the account by the required date. WE PAY will debit the total amount of funds from EMPLOYER two (2) business days before the check date.

5. **Authorization.** EMPLOYER authorizes WE PAY to initiate debit or credit entries to its Payroll Account for the applicable charges related to the services provided by WE PAY; to send or transmit to the EMPLOYER's financial institution a credit entry to the account of an employee to effect a payment from EMPLOYER to the employee; and/or to send or transmit a debit entry to the employee's account to effect a payment from the employee to EMPLOYER or to cover any shortfall. EMPLOYER hereby authorizes WE PAY 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 in an overdraft upon the account of EMPLOYER or WE PAY.

6. **NSF Occurrence.** EMPLOYER hereby agrees that for each debit return or nonsufficient funds occurrence (“NSF”), EMPLOYER will be charged WE PAY’s then current daily NSF charge (currently \$250.00) plus any and all fees and costs associated with the NSF, including, without limitation, WE PAY’s attorney’s fees and costs of collection and those fees, costs and damages set forth below. WE PAY may reverse any deposit or payment made to an employee or other person or entity; freeze any other funds without notice to the EMPLOYER or employee; 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 transfer sufficient funds directly to the account(s) identified by WE PAY within forty eight (48) hours of notification by WE PAY. Additional charges imposed by the EMPLOYER's financial institution are separate from WE PAY charges and shall be and remain the EMPLOYER’s responsibility.

7. **Electronic Transfers.** Upon receipt of the electronic funds transfers (“EFT”), 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, WE PAY shall have the right to hold EMPLOYER’s money in escrow until all payments made by WE PAY on behalf of the EMPLOYER have cleared and WE PAY shall be relieved of any responsibility to process that payroll until available funds are sufficient to process the payroll.

8. **Direct Deposit.** Each employee who desires to receive electronic transfer of funds due as wages or salary will provide EMPLOYER with a Direct Deposit Authorization Agreement. The Direct Deposit Authorization Agreement will authorize EMPLOYER to use WE PAY 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 WE PAY 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.

9. 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 WE PAY 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.

10. Length of Agreement; Fees and Costs Due To WE PAY. This Agreement shall remain in force and effect for an initial term of two (2) years and shall renew for successive one (1) year terms unless terminated by either Party in accordance with the Termination provisions of this Agreement more fully set forth below. The fees and costs due to WE PAY by EMPLOYER are set forth on the attached Schedule. WE PAY reserves the right to adjust its costs and fees on or before July 31 of each year. WE PAY shall provide written notice of adjustments to its fees and costs at least sixty (60) days in advance and EMPLOYER shall thereafter have the right to terminate this Agreement upon thirty (30) days' prior written notice to WE PAY.

11. Damage Limitation. Other than as specifically set forth in this Agreement, WE PAY shall not be liable for any damage or loss (including, but not limited to, liabilities, attorneys' fees, 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. WE PAY's liability to EMPLOYER for any damages of any type under any circumstances relating to or arising under this Agreement shall be limited to the amount of damages actually suffered or incurred by EMPLOYER, however, in no event shall WE PAY'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), transaction(s) and/or voucher(s) on which the claim is based. WE PAY 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 WE PAY with written notice of any claim within thirty (30) days of its occurrence, where EMPLOYER failed to timely notify WE PAY of any changes to its tax rate, where EMPLOYER caused said charge, penalty or cost, or where EMPLOYER's account is not in good standing. WE PAY's sole liability to EMPLOYER or any third party for claims of any type or character arising from errors or omissions in the services that are caused by WE PAY shall be to correct the affected EMPLOYER report, data or tax agency filings, as the case may be, at no charge to EMPLOYER. WE PAY SHALL NOT BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR DAMAGES FOR BUSINESS INTERRUPTION OR LOSS OF INFORMATION) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED BY WE PAY HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY.

12. Exclusion Of Warranties. WE PAY makes no representations or warranties except as expressly stated herein and all other warranties, express or implied, are hereby specifically excluded.

13. Remedies. The EMPLOYER shall be 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, WE PAY fees and costs and any and all obligations of WE PAY hereunder together with interest thereon at the rate of 2% per month, court costs, professional fees and costs incurred by attorneys, accountants, and experts witnesses. The EMPLOYER shall indemnify and hold WE PAY harmless from all liabilities, losses, costs and expenses (including attorney's fees) incurred by WE PAY and caused by or arising out of (a) EMPLOYER's 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, state or local laws, regulations, rules or operating letters, including, but not by way of limitation, The Electronic Fund Transfer Act, Regulation E promulgated there under, and all amendments thereto; (c) any action taken by WE PAY 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 WE PAY is authorized to withhold. Notwithstanding subparagraph (c), WE PAY shall have the right to refuse the reversal of any electronic direct deposit to the account of an employee.

14. Capacity. The EMPLOYER represents and warrants 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 this Agreement has been duly authorized by the EMPLOYER and is a binding obligation of the EMPLOYER. The undersigned representative has been duly authorized to sign this agreement on behalf of the EMPLOYER.

15. Limited Power of Attorney. EMPLOYER hereby appoints WE PAY as attorney-in-fact to represent EMPLOYER before federal, state, and local taxing authorities and any insurance provider with respect to payrolls and taxes and/or submit records to federal, state, and local taxing authorities and any insurance provider. WE PAY will serve as the Reporting Agent, affirmed by the EMPLOYER's signature, over the tax accounts and taxing authorities. The EMPLOYER hereby authorizes WE PAY to debit electronically or otherwise the EMPLOYER's Payroll Account for wages, salaries, payroll taxes and/or associated fees. This Limited Power of Attorney shall terminate upon thirty (30) days advance written notice provided by EMPLOYER to WE PAY.

16. Termination. Either Party may immediately terminate this agreement "for cause" which shall mean a material breach of the terms and conditions of this agreement by the other Party. 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 WE PAY are paid in full for all payrolls serviced by WE PAY. 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. Payroll services may be immediately terminated by WE PAY without prior notice if (i) any unauthorized credits or debits are initiated in EMPLOYER's name, (ii) the Originating Bank (as defined by NACHA) notifies WE PAY that it is no longer willing to originate debits and credits for any

reason, (iii) WE PAY's authorization to debit EMPLOYER's account is terminated, (iv) EMPLOYER terminates or is terminated from the Tax Filing Services, or (v) WE PAY reasonably determines that EMPLOYER no longer meets WE PAY's credit/financial eligibility requirements for such Services.

17. 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 WE PAY, which consent may be granted or withheld at WE PAY's sole discretion.

18. Choice of Law; Venue of Disputes. The PARTIES agree that the laws of the Commonwealth of Pennsylvania shall govern the interpretation and enforcement of this Agreement without giving effect to its choice of law provisions. Any claim, cause of action, litigation or similar proceeding by EMPLOYER or WE PAY for any reason relating in any way to this Agreement or the PARTIES' relationship shall be commenced and held in the Court of Common Pleas of Lackawanna County, Pennsylvania or in the United States District Court for the Middle District of Pennsylvania situated in Scranton, Pennsylvania.

19. No Third Party Beneficiaries. Nothing contained in this Agreement shall create or be deemed to create third party beneficiaries of or to this Agreement. More specifically, EMPLOYER's employees shall not be construed to be third party beneficiaries hereof.

20. Independent Contractors. The PARTIES agree that WE PAY and EMPLOYER are each acting independently of the other, that they are not joint venturers, and that neither is an agent of the other.

21. Entire Agreement. The PARTIES agree that this Agreement is the entire agreement between the PARTIES and that it replaces and supersedes any prior oral or written agreements, discussions and understandings of any manner between the PARTIES and that EMPLOYER has not been induced to enter into this Agreement by any representation that is not set forth herein.

22. Amendments. Any amendment, modification, change or supplement to this Agreement by WE PAY shall be binding upon the EMPLOYER thirty (30) days after notice of any such amendment, modification, change or supplement has been provided to EMPLOYER and EMPLOYER fails to object thereto or to terminate the Agreement.

23. Rules Of Construction. This Agreement shall be deemed to have been jointly drafted by WE PAY 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.

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

EMPLOYER: _____

We Pay Payroll Processing Company:

Authorized Signature

Authorized Signature

By: _____
(Please Print Name)

By: _____
(Please Print Name)

Title: _____

Title: _____

Address: _____

Federal EIN: _____