

ACH Origination Agreement

This Agreement is made this _____ day of _____, 20_____, by and between _____ (the "Company") and Payrolls Unlimited ("Third Party Sender").

RECITALS

A. Company wishes to initiate credit entries pursuant to the terms of this Agreement and in accordance with services agreement and the *ACH Rules* (the *Rules*). The "Third Party Sender" is willing to act as an Originating Depository "Third Party Sender" (ODFI) with respect to such entries as required by the NACHA Operating Rules. The "Third Party Sender" will be responsible for maintaining the processing relationship with the ODFI.

B. Unless otherwise defined herein, capitalized terms shall have the meanings provided in the *Rules*. The term "Entries" shall have the meaning provided in the *Rules* and shall also mean the data received from the Company hereunder from which the "Third Party Sender" prepares entries.

AGREEMENT

1. *ACH Rules*. The Company acknowledges receipt of a copy or has access to a copy of the *Rules*. The Company agrees to comply with and be bound by the *Rules*. In the event the Company violates any of the applicable *Rules* and NACHA imposes a fine on the "Third Party Sender" because of the Company's violation, the "Third Party Sender" may charge the fine to the Company. The Third Party Sender agrees to inform the Company of revisions to the *Rules* of which the Third Party Sender has knowledge. The Third Party Sender reserves the right to audit the company to ensure compliance with the ACH Rules.
2. U.S. Law. It shall be the responsibility of the Company that the origination of ACH transactions complies with U.S. law.
3. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the state of _____.
4. Security Procedures. The Company and the Third Party shall comply with the agreed upon security procedures.
6. Notice of Returned Entries. The Third Party Sender will handle all exception items received from the ODFI. This would include all NOCs and returns. Any transmission of exception information between the Third Party Sender and Company will be sent using commercially reasonable security methods.
7. Payment. The Company shall pay the "Third Party Sender" the amount of each entry transmitted pursuant to this Agreement at such time on the [Settlement Date with respect to] [date of transmittal by "Third Party Sender" of] such entry as the Financial Institution, at its discretion, may determine, and the amount of each on-us entry at such time on the Effective Entry Date of such entry as the Financial Institution, at its discretion, may determine.
8. Company Representations and Agreements; Indemnity. The Company agrees that (a) each person shown as the Receiver on an entry received by the "Third Party Sender" from the Company has authorized the initiation of such entry (b) such authorization is operative at the time of transmittal or crediting by the "Third Party Sender" as provided herein, (c) entries transmitted to the Third Party Sender by the Company are limited to those types of entries set forth in Section 26, (d) the Company shall perform its obligations under this Agreement in accordance with all applicable laws and regulations, and (e) the Company shall be bound by and comply with the *Rules* as in effect from time to time, including without limitation the provision thereof making payment of an entry by the Receiving Depository "Third Party

Sender" to the Receiver provisional until receipt by the Receiving Depository "Third Party sender" of final settlement for such entry; and specifically acknowledges that if such settlement is not received, the Receiving Depository "Third Party Sender" shall be entitled to a refund from the Receiver of the amount credited and the Company shall not be deemed to have been paid the Receiver. The Company shall indemnify the Third Party Sender against any loss liability or expense (including attorneys' fees and expenses) resulting from any breach of any of the foregoing agreements.

9. Liability; Limitations On Liability; Indemnity.

(a) The "Third Party Sender" shall be responsible only for performing the services expressly provided for in this Agreement, and shall be liable only for its negligence in performing those services. The "Third Party Sender" shall not be responsible for the Company's acts or omissions (including without limitation the amount, accuracy, timeliness of transmittal or due authorization of any entry received from the Company) or those of any other person, including without limitation any Federal Reserve Bank or transmission or communications facility, any Receiver or Receiving Depository "Third Party Sender" (including without limitation the return of an entry by such Receiver or Receiving Depository Financial Institutions, and not such person shall be deemed the Financial Institution's agent. Company agrees to indemnify the "Third Party Sender" against any loss, liability or expense (including attorneys' fees and expenses) resulting from any claim of any person that the "Third Party Sender" is responsible for, any act of omission by the Company or any other person described in this Section.

(b) In no event shall the Third Party Sender be liable for any consequential, special punitive or indirect loss or damage that the Company may incur or suffer in connection with this Agreement, including losses or damage from subsequent wrongful dishonor resulting from the Financial Institution's acts or omissions pursuant to this Agreement.

(c) The Third Party Sender shall be excused from failing to act or delay in acting if such failure or delay is caused by legal constraint, interruption of transmission, or communication facilities, equipment failure, war, emergency conditions or other circumstances beyond the Third Party Senders' control. In addition, the "Third Party Sender" shall be excused from failing to transmit or delay in transmitting an entry if such transmittal would result in Financial Institution's having exceeded any limitation upon its intra-day net funds position established pursuant to Federal Reserve guidelines or if the "Third Party Sender" is otherwise violating any provision of any risk control program of the Federal Reserve or any rule or regulation of any other U.S. governmental regulatory authority.

(d) The Third Party Senders' liability for loss of interest resulting from its error or delay shall be calculated by using a rate equal to the average Federal Funds Rate at the Federal Reserve Bank of New York for the period involved. (At the Financial Institution's option, payment of such interest may be made by crediting the Account from any claim of any person that the "Third Party Sender" is responsible for any act or omission of the Company or any other person described in Section 15(a).)

(a) Would have been detected if the "Third Party Sender" had complied with such procedure.

17. Inconsistency of Name and Account Number. The Company acknowledges and agrees that, if an entry describes the Receiver inconsistently by name and account number, payment of the entry transmitted to the Receiving Depository "Third Party Sender" might be made by the Receiving Depository "Third Party Sender" (or by the "Third Party Sender" in the case of an on-us entry) on the basis of the account number even if it identifies a person different from the named Receiver, and that the Company's obligation to pay the amount of the entry to the "Third Party Sender" is not excused in such circumstances.

18. Amendments. From time to time the "Third Party Sender" may amend any of the terms and conditions contained in this Agreement, including without limitation, any cut-off time, any

business day, and any part of the Schedules attached hereto. Such amendments shall become effective upon receipt of notice by the Company or such later date as may be stated in the Financial Institution's notice to the Company.

19. Notices, Instructions, Etc.

- (a) Except as otherwise expressly provided herein, the "Third Party Sender" shall not be required to act upon any notice or instruction received from the Company or any other person, or to provide any notice or advice to the Company or any other person with respect to any matter.
- (b) The "Third Party Sender" shall be entitled to rely on any written notice or other written communication believed by it in good faith to be genuine and to have been signed by an Authorized Representative, and any such communication shall be deemed to have been signed by such person. The names and signatures of Authorized Representatives are set forth in Schedule [E] attached hereto. The Company may add or delete any Authorized Representative by written notice to the "Third Party Sender" signed by at least two Authorized Representatives other than that being added or deleted. Such notice shall be effective on the [e.g., second business day] following the day of the Financial Institution's receipt.
- (c) Except as otherwise expressly provided herein, any written Agreement shall be delivered, or sent via email to the contact on file with the Company.

22. Termination. The "Third Party sender" or Company may terminate this Agreement at any time. Such termination shall be effective on the [e.g. second business day] following the day of receipt of written notice of such termination or such later date as in specified in that notice. Any termination of this Agreement shall not affect any of the Company's obligations arising prior to such termination. The "Third Party Sender" has the right to terminate this agreement immediately if the company fails to comply with the ACH rules or if the company is no longer creditworthy.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized officers.

Company: _____

By: _____

Title _____

"Third Party Sender" _____

By _____

Title _____