

ROE Web Payroll Processor Agreement

This Agreement is made on the _____ day of _____, 200____

BETWEEN:

The Canada Employment Insurance Commission (hereinafter referred to as the “Commission”)

and

_____ (insert Payroll Processor name), in the province of _____ (hereinafter referred to as “the Payroll Processor”)

Whereas the Client Employer as an employer has an obligation to submit Records of Employment (hereinafter referred to as “ROE”) to the Commission in accordance with the *Employment Insurance Act and Regulations*;

And whereas the Client Employer has authorized the Payroll Processor, to act on its behalf to prepare and submit ROEs to the Commission, in accordance with the Letter of Agreement, appended as Annex A to the Agreement;

And whereas the Commission has developed a secure Internet-based application, ROE Web Program, permitting employers to submit ROE using the Government of Canada’s Government On Line Public Key Infrastructure (GOL PKI) technology;

And whereas the Payroll Processor wishes to use the ROE Web Program to submit ROEs to the Commission on behalf of its Client Employer;

The Parties agree as follows:

1. Purpose of the Agreement

1.1 This Agreement sets out the terms and conditions under which the Commission will make the Internet-based application, known as the “ROE Web Program”, available to the Payroll Processor for the purpose of securely submitting ROEs by using the GOL PKI technology.

1.2 Since it is unlikely that the individual signing this Agreement on behalf of the Payroll Processor will be submitting the ROE, this Agreement will set out the terms and conditions under which:

(1) the Payroll Processor will identify and authenticate its employees, who are authorized to use Epasses to submit ROEs on behalf of its Client Employer or to perform any other transactions as authorized by the Commission; and

(2) the Payroll Processor will be responsible for the use of the Epasses for the ROE WEB Program or any other program with the Commission for which the employees have been enrolled to use their Epasses.

2. Definitions

“Record of Employment” refers to the information to be submitted by all employers relating to employment history as is required by section 19 of the *Employment Insurance Regulations*.

ROE Web Payroll Processor Agreement

“ROE Web Program” means the secure Internet-based application developed by the Commission for Employers to submit Records of Employment electronically in compliance with the *Employment Insurance Act* and *Regulations* in a secure and confidential fashion using an Epass.

“Payroll Processor” means an entity which provides accounting and payroll services to its Client Employers and is authorized in writing by them to submit ROEs on their behalf;

“Client Employer” means the entity responsible for fulfilling its obligations under the *Employment Insurance Act* and *Regulations* to submit ROE’s and has authorized its Payroll Processor in writing to submit ROEs on its behalf.

“Program Enrolment” is the process by which an employee of the Payroll Processor is authorized by the Commission to use their Epass to receive services or make transactions with the Commission for the ROE Web Program or for any other program as authorized by the Commission.

“Primary Officer” is a partner, officer, or employee, of the Payroll Processor, who has been authenticated in person by an official of the Commission, and is duly authorized to sign this Agreement on behalf of the Payroll Processor pursuant to a letter of authorization, and to designate a Designated Representative for purposes of the ROE Web Program; and for greater certainty, the Primary Officer may act as a Designated Representative for purposes of this Agreement.

“Designated Representative” means an employee authorized for the purpose of applying for the issuance of E-passes and for identifying and authenticating any employees, who will be issued an Epass and enrolled in the ROE Web Program; and for greater certainty, a Designated Representative may be a ROE Web Issuer for the purposes of this Agreement.

“ROE Web Issuer” means an employee of the Payroll Processor who has been identified and authenticated by the Designated Representative and is authorized to use an Epass to submit Records of Employment to the Commission pursuant to the ROE Web Program.

“Epass” means the unique electronic credentials, that use PKI technology and certificates to:

- (i) authenticate the identity of the user when the user sends information by the secure electronic signature created by the Epass and appended to the transaction such that the user cannot deny having signed the transaction;
- (ii) access on-line Government of Canada programs and services that require enhanced security measures, including confidentiality of the data; and,
- (iii) ensures that messages or documents have not been altered during or after transmission on-line.

3. Availability of ROE Web Program

3.1 The Commission will make available the ROE Web Program to the Payroll Processor for the purpose of submitting ROEs seven days a week twenty-four hours a day, except during periods regularly scheduled for maintenance or repair. The Commission will make available Service Delivery Support (Helpdesk) Monday to Friday 0800 to 2030 Atlantic Time

3.2 The Commission makes no representations and warranties about the availability of ROE Web Program because of events outside its control, or that the Commission could not have reasonably prevented by means of controls, compromise, disaster recovery procedures, business continuity procedures, and that occurred without the fault of the Commission.

ROE Web Payroll Processor Agreement

3.3 The Government of Canada makes no representations or warranties and disclaims all liability in regard to the availability of the GOL PKI services or related technology or of any other intermediary Internet services, systems or the related technology of the intermediary.

4. Program Enrolment

Upon notification by the Payroll Processor to the Commission that the identity of a Primary Officer, and/or Designated Representative and/or ROE Web Issuer has been authenticated and the individual is thereby authorized by the Payroll Processor to act on its behalf for purposes of the ROE Web program, the Commission may enroll the individual into the ROE Web Program.

5. No charge to use ROE Web Program and Epasses

The Commission will provide the ROE Web Program and the Epasses for that purpose to the Payroll Processor free of charge.

6. Responsibilities of the Payroll Processor

6.1 Prior to the use of the ROE Web Program to submit ROEs on behalf of its Client Employer, the Payroll Processor will ensure that a Letter of Agreement containing at a minimum the terms and conditions contained in the form appended as Annex A to this Agreement is executed between it and the Client Employer.

6.2 The Payroll Processor will maintain a copy of the signed Letter of Agreement, in the form appended as Annex A to this Agreement, and a copy of any service agreement and any and all other authorizations provided by the Client Employer. The Commission may request a copy of either agreement or any authorizations upon reasonable notice and the same shall be provided forthwith by the Payroll Processor upon said request.

6.3 The Payroll Processor will provide the Client Employer with a copy of this Agreement between the Payroll Processor and the Commission which sets out the terms and conditions according to which the Payroll Processor may use the Web Roe Program for submitting ROEs on line to the Commission.

6.4 The Payroll Processor certifies that all data used to prepare the ROEs is provided by the Client Employer and that the Client Employer has taken full responsibility for the accuracy, and integrity of the data, in accordance with the terms and conditions of the Letter of Agreement between the Payroll Processor and the Client Employer.

6.5 The Payroll Processor is fully responsible for any use of an Epass that is in breach of this Agreement or the Epass User Agreement by the Primary Officer, Designated Representative, or ROE Web Issuer, whether said use is within or outside the course of their employment.

6.6 The Payroll Processor will, from time to time, name and confirm the identity of one or more individuals authorized to act on its behalf as the Primary Officer, the Designated Representative(s), and ROE Web Issuer(s) and give notice to the Commission. By notifying the Commission, the Payroll Processor certifies that the Primary Officer and the Designated Representative(s) are authorized to authenticate an employee for purposes of Program Enrolment, who will be known as "ROE Web Issuers," and that the Primary Officer, the Designated Representative(s) and the ROE Web Issuer(s) are authorized to use the ROE Web Program .

6.7 The Payroll Processor certifies that identity information provided in relation to the Designated Representative and the ROE Web Issuers for purposes of ROE Web Program enrolment will be accurate and complete and that it has verified the identity of the Designated Representative by confirmation of

ROE Web Payroll Processor Agreement

privately shared information, if the identity of the Designated Representative has been previously established, or by an examination of certified copies of two pieces of identification accompanied by the attestation of a person permitted to serve as a guarantor on a passport application that the person purporting to possess an identity is, to his or her knowledge, that person. The Payroll Processor will further certify to the Commission that, in seeking enrolment to the ROE Web Program for its Primary Officer, Designated Representative(s) or ROE Web Issuer(s), that it has no information or knowledge that the identity of the Primary Officer, any Designated Representative or ROE Web Issuer is inaccurate, incomplete or has changed or altered, and they are authorized to be enrolled accordingly.

6.8 The Payroll Processor will maintain, for audit purposes, records linking an assigned Epass throughout the period that the Epass is so assigned to the Primary Officer, the Designated Representative or ROE Web Issuer and is so enrolled in the ROE Web Program. Such records will include the identification information, documents or records used to authenticate any individual for ROE Web enrolment purposes and will be maintained for the same period of time that any other record is required to be maintained by the Payroll Processor as set out in the *Employment Insurance Act* and *Regulations*, and will be produced upon request of the Commission. The Payroll Processor will provide such records, including a list of the names of the Primary Officer, Designated Representative(s) and ROE Web Issuer(s) to the Commission forthwith upon request.

6.9 The Payroll Processor shall not submit ROEs to the Commission on behalf of any Client Employer who has revoked or terminated its authorization to submit ROEs on its behalf and will immediately notify the Commission of said revocation or termination by the Client Employer.

6.10 The Payroll Processor will submit the ROE in the form provided by the Commission which will indicate that the ROE is submitted on behalf of the Client Employer identified on the ROE.

7. Protection of Username and Password

The Payroll Processor agrees to ensure that prior to Program Enrolment, the Primary Officer, the Designated Representative and ROE Web Issuers, as the case may be, have read and understood the “Terms and Conditions of Use” for the Epass and further understand and agree that their username(s) and password(s) are unique to them, issued subject to the “Terms and Conditions of Use”, and that they must maintain their confidentiality at all times and must not let any other person use them in order to preserve the security of their electronic communications.

8. Deemed Signature

When the Primary Officer, Designated Representative or the ROE Web Issuer uses their Epass to submit ROE or bulk transfer of ROE, on behalf of the Client Employer and presses the “submit” button, the Primary Officer, Designated Representative or ROE Web Issuer is deemed to have signed and issued the ROE, or all ROE contained in that bulk transfer, as the case may be, and is deemed to do so on behalf of the Client Employer as authorized.

9. Protection of Employer’s Computer Networks

The Payroll Processor warrants that it will operate the ROE Web Program on computer equipment that is regularly scanned for viruses and use of malicious programs, and agrees to accept responsibility for any and all use of its computer networks in regard to the ROE Web Program.

10. Notification of the Commission

The Payroll Processor agrees to notify the Commission in the manner set out in section 20 if it has reason to believe that there has been a breach in the terms and conditions of this Agreement, or any act or omission

ROE Web Payroll Processor Agreement

of the Primary Officer, Designated Representative(s) or ROE Web Issuer(s) that would be in breach of this Agreement.

11. Suspension or Revocation of Program Enrolment to ROE Web Program

11.1 The Payroll Processor will suspend or revoke the enrolment of the Epass to the ROE Web Program, and will so notify the Commission by signed notice, electronically & digitally signed, in writing or by facsimile:

- a) if the Payroll Processor's relationship with a Primary Officer, Designated Representative or with a ROE Web Issuer has changed,
- b) if there is any change in the Primary Officer's, Designated Representative's or the ROE Web Issuer's identification or authentication information or authorization to act on behalf of the Payroll Processor,
- c) if the username or password of the Primary Officer, a Designated Representative or ROE Web Issuer is compromised or insecure, or suspected of being compromised or insecure; or
- d) if the Payroll Processor, the Primary Officer, a Designated Representative or ROE Web Issuer fails to meet the obligations under this Agreement, or under any law or regulation.; or
- e) if the Payroll Processor is no longer authorized by the Client Employer to submit ROEs on its behalf.

11.2 For greater certainty, the revocation or suspension of the enrolment of an Epass to the ROE Web Program does not affect the enrolment of other Epasses enrolled in the ROE Web Program, and does not terminate this Agreement. If the Payroll Processor revokes or suspends the enrolment of the Primary Officer from the ROE Web Program, the Payroll Processor will replace the Primary Officer and will notify the Commission of the new Primary Officer, and will certify the name and the authority of the replacement Primary Officer to act on behalf of the Payroll Processor.

11.3 The Payroll Processor hereby confirms the authority of the Primary Officer, the Designated Representative(s) and the ROE Web Issuer(s) and will inform them that it will revoke the enrolment of their Epass to the ROE Web Program where they have reason to believe that their username or password has been compromised or insecure, and will so advise their employer of the revocation.

11.4 The Commission may of its own initiative without prior notice, or will on request of the Payroll Processor, Primary Officer, Designated Representative or ROE Web Issuer, suspend or revoke the enrolment of an Epass to the ROE Web Program if any of the circumstances set out in section 11.1 occur.

12. Disclaimer

12.1 The Payroll Processor will not hold the Commission liable for and will indemnify and save Canada harmless from any damages, direct or indirect, or consequential, arising from:

- a) any breach by the Payroll Processor of this Agreement or other conduct of the Payroll Processor giving rise to liability in tort (including negligence), contract or any other theory of liability;
- b) any breach by the Payroll Processor, whether deliberate or negligent, of the obligation set out in section 7 "Protection of Username and Password";
- c) the Primary Officer's, Designated Representative's or the ROE Web Issuer's unauthorized or unreasonable use or reliance on ROE Web Program, or unauthorized or unreasonable use or reliance on Epasses enrolled for the ROE Web Program .

ROE Web Payroll Processor Agreement

- d) the Payroll Processor's, Primary Officer's, Designated Representative's or ROE Web Issuer's failure to request revocation in accordance with section 11 "Suspension or Revocation of Program Enrolment to ROE Web Program";
- e) a determination, judgement or award finding the Commission to be liable with the Payroll Processor or a relying party as a partner of, joint venturer with, principal or agent of, or trustee or fiduciary for him, in respect of the ROE Web Program, under section 17 "No Partnership";
- f) any breach by the Payroll Processor of the "Responsibilities of Payroll Processor" (section 6); or,
- g) inaccurate or incomplete information or documents submitted by the Payroll Processor or contained in the certificates of which the Payroll Processor has knowledge.

12.2 The Payroll Processor will not hold the Commission liable for any damages, direct or indirect, or consequential, arising from any lack of availability, or delay in providing the ROE Web Program.

13. Liability

13.1 The ROE Web Program is offered as a service for communications and transactions between the Commission and the Payroll Processor. The Commission therefore states that it has no relationship and owes no duty whatsoever to anyone who is not the Payroll Processor under this Agreement. The Commission will not be liable and expressly disclaims all liability whatsoever to anyone or to any entity who is not the Payroll Processor under this Agreement, for any claims, actions, loss, damages, awards, including, without limitation, loss of revenue or profit or savings, lost or damaged data, or other commercial or economic loss, or any indirect or incidental, special or consequential damages, whatsoever, even if the Commission has been advised of the possibility of such damages, or for claims by a third party, nor shall the Commission's contractors, suppliers, agents, employees or representatives have such liability. This section shall apply whether or not the liability results from tort (including negligence), contract (including breach of fundamental terms or conditions, a fundamental breach of this Agreement), criminal or otherwise from any other theory of responsibility or liability.

13.2 The Commission makes no warranties or representations, express or implied, with respect to the ROE Web Program, Epasses or the GOL Public Key Infrastructure, nor to the operations which will be conducted using or relying on the ROE Web Program, Epasses or the GOL Public Key Infrastructure. The ROE Web Program provided by the Commission is provided without warranties, representations, and conditions, express or implied, including, without limitation, warranties or conditions of accuracy, completeness, currency, merchantable quality, fitness for a particular purpose, or those arising by law or by statute, or by usage of trade or course of dealing.

13.3 Notwithstanding anything in this Agreement the Commission's maximum aggregate liability to a Payroll Processor under this Agreement for the ROE Web Program, or any third party, who reasonably uses or relies on the ROE Web Program, for any claim whatsoever related to any service associated with the ROE Web program, shall not exceed \$50,000.00 per award, judgement or negotiated settlement, even if the Commission has been advised of the possibility of such damages, or for claims by a third party, nor shall the Commission's contractors, suppliers, agents, employees or representatives have such liability. This section shall apply whether or not the liability results from tort (including negligence), contract (including breach of fundamental terms or conditions, a fundamental breach of this Agreement), criminal or otherwise from any other theory of responsibility or liability.

14. Dispute Resolution

The Parties hereby undertake to use their best efforts to resolve in an amicable and expeditious manner any dispute or difference that may arise between them under this Agreement, first by negotiation and, failing resolution, then through an independent mediator. Any dispute or difference which has not been resolved by either of these means shall be referred to binding arbitration under the *Commercial Arbitration Act*.

ROE Web Payroll Processor Agreement

15. Criminal Offence

The Payroll Processor acknowledges and will ensure that that the Primary Officer, Designated Representative(s) and ROE Web Issuer(s) understand that it is a criminal offence to knowingly make false or misleading entries on a ROE, and to use their Epass to gain unauthorized access to any computer networks and systems, or to cause any mischief to any computer networks and systems or to any data contained in the networks or systems.

16. Privacy and Confidentiality

16.1 The Payroll Processor represents and warrants that the Payroll Processor has obtained the consent of the Client Employer, as set out in the Letter of Agreement appended as Annex A, that the Commission may collect and use identifying information, being the name of the Client Employer and its province of operation, and if required, its Business Number, as issued by the Canada Revenue Agency, for the purposes of communicating securely with the Commission and identifying any ROE submitted by the Payroll Processor on behalf of the Client Employer using the ROE Web Program.

16.2 The Payroll Processor will inform the Primary Officer, Designated Representative(s) or ROE Web Issuer(s) that identifying information of the Primary Officer, Designated Representative(s) or ROE Web Issuer(s) collected and used by the Payroll Processor for purposes of Program Enrolment to the ROE Web Program or for purposes of suspension or revocation of Program Enrolment, may be provided to the Commission upon request, and the Payroll Processor warrants that the Primary Officer, Designated Representative(s) or ROE Web Issuer(s) have consented to any such disclosure of identifying information prior to Program Enrolment.

16.3 It is understood that the Payroll Processor and the Client Employer have the right to access and request correction of any identifying information from the records maintained by the Commission, and that the Primary Officer, Designated Representative(s) and ROE Web Issuer(s) have a right to access their identifying information in accordance with the *Privacy Act*.

16.4 It is understood that the Primary Officer, Designated Representative(s) and ROE Web Issuer(s) may, at any time, by signed written notice, either electronically and digitally signed, in writing, or by facsimile, withdraw their consent as set out in section 16.2, and if they do so, the Commission may not be able to provide or continue to provide to the Payroll Processor enrolment with the ROE Web Program, in which case the ROEs may be submitted through another service delivery channel by the Client Employer. Until receipt of such notification, the Commission is entitled to rely on section 16.2.

16.5 It is understood that the Client Employer may, at any time, by signed written notice, either electronically and digitally signed, in writing, or by facsimile, withdraw its consent as set out in section 16.1, and if the Client Employer does so, the Commission may not be able to provide the Payroll Processor, or continue to provide the Payroll Processor, with enrolment with the ROE Web Program, in which case the ROEs may be submitted through another service delivery channel by the Client Employer. Until receipt of such notification, the Commission is entitled to rely on section 16.1.

17. No Partnership

The Commission and the Payroll Processor expressly disclaim any intention to create a partnership, employer/employee relationship, joint venture, joint enterprise or fiduciary relationship. It is understood, acknowledged and agreed that nothing contained in this Agreement nor any acts of the Commission or the Payroll Processor or any relying party, particularly the Client Employer, shall constitute or be deemed to constitute the Commission and the Payroll Processor (or any relying party) as partners, employer and

ROE Web Payroll Processor Agreement

employee, joint venturers, principal and agent, trustee and beneficiary, or as in a fiduciary relationship of any kind, in any way or for any purpose.

18. Assignment

The Payroll Processor may not assign this Agreement, in whole or in part. The Commission may assign any part or all of this Agreement, and may contract out any or all of its services.

19. Term of Agreement

19.1 Either party may terminate this Agreement for any reason upon thirty days' notice.

19.2 The Commission may terminate this Agreement without notice in the event that the Payroll Processor fails to comply with its obligations under this Agreement or the Payroll Processor is no longer authorized to submit ROEs on behalf of the Client Employer.

19.3 In the event of termination of this Agreement, any Epasses issued to the Primary Officer, the Designated Representative(s) and ROE Web Issuer(s) shall no longer be enrolled with the Commission for the ROE Web Program or any other program without notice.

20. Notice

20.1 Where this Agreement calls for notice or notification by either party, unless specified otherwise, such notice may be delivered by hand, by mail, by courier, by facsimile, or by digitally signed electronic mail. A notice shall be deemed to have been received on the fifth business day after mailing if sent by regular mail, on the date of delivery if sent by courier and on the first business day after the date of transmission if sent by facsimile or electronic mail.

20.2 Notice shall be given to the Commission at:

to the attention of:

Director
Employer Services, Operations Branch
Service Canada
10th. Floor, Place du Portage
Gatineau, QC K1A0J9
Telephone: 819 994-6309
jay.khosla@servicecanada.gc.ca

20.3 Notice shall be given to the Payroll Processor at

to the attention of:

21. Severability

If any provision of this Agreement is declared by an arbitrator or a court of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed from the Agreement and all other provisions of the Agreement shall remain in full force and effect.

ROE Web Payroll Processor Agreement

22. Successors and Assigns

Subject to section 16, this Agreement shall enure to the benefit of, and be binding upon, the successors and any permitted assigns of the Commission and of the Payroll Processor, except that Epasses (subject to the Epass “Terms of Use”) are personal to the Primary Officer, Designated Representative(s) and ROE Web Issuer(s) and are not transferable.

23. Survival

Notwithstanding the termination of this Agreement, provisions concerning indemnity, liability, and dispute resolution shall survive.

24. Entire Agreement

This Agreement, as amended from time to time, constitutes the entire and sole agreement between the parties with respect to ROE Web Program and supersedes all previous negotiations, communications and other agreements, whether written or oral, relating to it, unless they are incorporated by reference in the Agreement. There are no terms, covenants, representations, statements or conditions binding on the parties other than those contained in this Agreement.

25. Governing Laws

This Agreement shall be governed and construed in accordance with the laws of Canada and any applicable laws of the Province of _____ exclusive of their conflicts-of-laws principles.

Date

Signature of Payroll Processor

Date

Canada Employment Insurance Commission