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## PAYZERWARE SOFTWARE LICENSING AND TERMS OF USE AGREEMENT

This Software Licensing and Terms of Use Agreement ("Agreement"), effective as of the date this Agreement is accepted by Payzer (the "Effective Date"), is made and entered into by and between Payzer, LLC, a Delaware Limited Liability Company ("Payzer") and you, a business or person that applies to use, registers to use, or uses, the Payzer Software, ("Licensee", "you", "yours" and the like). By clicking on the "I AGREE" button below and providing your electronic signature:

(1) you acknowledge that you have read the entire Agreement; (2) you agree to be bound by the terms of this Agreement; and (3) you represent and warrant that you have the authority to bind yourself and the entity identified in the application to receive the Services (defined below) hereunder to the terms of this Agreement. This Agreement sets forth the terms and conditions that apply to your use of the Services. Please read this Agreement and the Payzer Privacy Policy located at <https://www.payzer.com/terms/privacy-policy.pdf>, which may be updated from time to time (the "Privacy Policy") carefully prior to your access to and/or use of Service. By submitting information to Payzer and registering for or using a Service, you agree to be bound by the terms and conditions of this Agreement and the Privacy Policy, including any changes or revisions which Payzer, in its sole discretion, may make to this Agreement and/or the Privacy Policy from time to time.

A. Payzer has developed proprietary software and data to allow Licensee to manage its customers, operations and payments (the "Payzer Software"). The software is called "Payzerware" and is an end-to-end operating platform that provides applications for scheduling, CRM, job management, service agreements, accounts receivable, reporting, and "Payment Options". Payment Options refers to the Payzer Software modules that enable card and check payment acceptance, initiation and management of loan applications, and Payzer Debit Cards.

B. The following defined terms appear in this Agreement:

- "Bank Account": A bank account at a US financial institution.
- "Content": Any description of any service or product of a business, or any advice, opinion, offer, proposal, statement, data or other non-confidential information displayed or distributed, purchased or paid through the Services by Licensee.
- "Payee": The Payzer Software user that receives a payment.
- "Payer": The Payzer Software user that makes a payment.
- "Payment Account(s)": The credit card account, debit card account (including Payzer Debit Cards) or Bank Account that is used to fund a payment.
- "Payzer Debit Card(s)": One or more Payzer prepaid commercial debit card(s) that are provided to you for business purposes, enabling you to access funds in the associated Payzer prepaid commercial debit account(s).
- "Payment Transaction": The processing of a payment from a Payer to a Payee.
- "Rules": The rules and regulations, as may be amended from time to time, of the issuers, owners, managers or facilitators of Payment Accounts.
- "Service(s)": The products and services provided to you by Payzer as further described in this Agreement.

C. The parties desire that Payzer license the Payzer Software and provide Services to Licensee in accordance with the terms and conditions set forth in this Agreement.

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

1. **License.** Payzer hereby grants to Licensee a limited, revocable, non-sublicensable, non-transferable, royalty free, non-exclusive, restricted license to use the Payzer Software solely to manage its operations and payments, and any other features provided by Payzer within the Payzer Software, in all instances to the extent specifically authorized by this Agreement (the "Limited Purpose"). Licensee may not use the Payzer Software for any purpose other than the Limited Purpose. Payzer

reserves all rights not expressly granted to Licensee in this Agreement. Licensee shall not: (a) copy the Payzer Software; (b) modify, or create derivative works or improvements of the Payzer Software; (c) remove, disable, or otherwise create or implement any workaround to, any security features contained in the Payzer Software; (d) remove, delete, or alter any trademarks, copyright notices, or other Intellectual Property Rights (defined below) notices of Payzer or its licensors, if any, from the Payzer Software; (e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make the Payzer Software available to any other person or entity; or (f) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Payzer Software, in whole or in part. Licensee agrees that Payzer may stop (permanently or temporarily) providing the Payzer Software (or any features within the Payzer Software) to Licensee generally at Payzer’s sole discretion, with 30 days prior notice to Licensee. Licensee will be solely responsible for the accuracy of all data and Content that Licensee enters into the Payzer application under Licensee’s user credentials.

**2. Payzerware Terms.** As consideration for the license granted by Payzer to Licensee pursuant to this Agreement, Licensee authorizes Payzer to debit the Bank Account designated by Licensee for the license fees (“License Fees”) according to the table below:

License Type	No. of Payzerware Users	Payzerware Monthly License
Full	1 – 7	\$399
Full	8 – 24	plus \$60 for each additional user
Full	25+	\$1,499
Payment Options Only	Unlimited	\$49

Notes:

- (1) For customers who choose a Payzerware Full License, Payment Options are included with no additional monthly License Fee.
- (2) For customer who choose a Payzerware Payment Options Only License, you are not subject to the monthly software License Fee in any month where the total of settled card and loan volume exceeds \$25,000.
- (3) Payzer Legacy Customers who enrolled prior to 8/29/2019 for the legacy Payzer Software application are not subject to monthly License Fees. However, legacy Payzer Software customers are subject to a \$20 monthly inactivity fee.

The most time sensitive component of onboarding is loading your data. Our commitment is to load your data and onboard you within the “Expected Time” as outlined below (also see [Payzer Commitment & Onboarding Billing Practices](#)). If we do not, we will not charge you a monthly license fee beyond the Expected Time until data loading is complete, for as long as you remain committed. The “Expected Time” for Data Loading is defined based on the complexity of your data load. If you require a Standard Data Load, you should plan on making 2 normal monthly license payments prior to being able to adopt the system. If you require a Custom Data Load, we will let you know how much extra work and time is needed to get your data loaded. Generally, in the case of a custom load, you should plan on making 3 normal monthly license payments prior to system adoption. You will be notified within 5 business days of providing your data to us if your data requires a Custom Data Load.

The monthly License Fee for Full Licensees shall include 1,000 messages per month (text / SMS) to external users or customers. Each text / SMS message in a calendar month above 1,000 will be assessed \$.02 per message. There is no charge for email messages, or in-app messages to other Payzerware users.

Full Licensees may sign up to access the Callahan Roach Flat Rate Pricebook within Payzerware for either HVAC or Plumbing at an additional fee of \$99 per month for up to 4 users, plus \$25 per month for each additional user, capped at \$299 per month. Access to Callahan Roach Data for both the HVAC and Plumbing industries simultaneously will add \$10 to the total fee per month (e.g., if you have 5 users, your fee would be \$124 per month for 1 industry, \$134 per month for 2 industries). Use of the Callahan Roach Pricebook will be subject to Callahan Roach’s terms of use: <https://www.payzer.com/terms/callahanroach.pdf>.

The monthly License Fees will not change during the Initial Term (defined below). The monthly License Fee for renewal terms will be the price posted on the Payzer website at the time of your renewal. Except as set forth in this Agreement, all payments are non-refundable and shall be debited from Licensee’s Bank Account in U.S. dollars each month. Licensee will be responsible for all taxes, withholdings, duties and levies (excluding taxes based on the net income of Payzer). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due, plus any actual costs of collection, or the maximum amount allowed by law, whichever is less.

**3. Payment Option Terms.** Licensee represents and warrants to Payzer that it has read the terms and conditions

of the agreements below and agrees to be bound accordingly. Licensee may also accept payments from other Payzer users using Payzer Debit Card(s). Payzer processes Payment Transactions on behalf of the Payee, as the agent of the Payee, through accepted credit card, debit card, and ACH networks.

***Accepting Card Payments.***

Licensee may use the Services to accept payments from other Payzer Software users using registered Visa, Mastercard, Discover, or American Express cards in accordance with the terms and conditions of Payzer’s agreement with its partners, Vantiv available at <https://www.payzer.com/terms/vantivpaymentprocessing.pdf>, and Pineapple Payments available at <https://www.payzer.com/terms/paylinepaymentprocessing.pdf>.

***Accepting ACH and Mobile Check Deposit Payments.***

Licensee may also use the Services to accept payments from other Payzer users using Payzer check acceptance (ACH and Mobile Check Deposit) in accordance with the terms and conditions of Payzer’s agreement with its partner Paya available at <https://www.payzer.com/terms/sage-terms-and-conditions.pdf>. By accepting payments from other Payzer users using registered Visa, Mastercard, or Discover cards, or using Payzer check acceptance (ACH and Mobile Check Deposit).

***Making Payments to other Payzer Software Users.***

Licensee may use the Services to make payments to other Payzer Software users by using a Visa, Mastercard, Discover, or American Express cards, Payzer Debit Cards, or an external Bank Account. Licensee authorizes Payzer to route Payment Transactions through the external payment networks, ACH network, or utilize in-network transfers between Payzer Debit Cards, to make payments that Licensee has authorized. Licensee may also transfer funds between its Payzer Debit Cards, and transfer funds between its Payzer Debit Cards and its Bank Account. To make payments, Licensee must register and use a Payment Account, or use a Payzer Debit Card(s) which will be automatically registered for Licensee use. Licensee authorizes Payzer to confirm that the applicable Payment Account is in good standing with the appropriate financial institution including, but not limited to, by submitting a request for a payment authorization and/or a low dollar credit and/or debit to the Payment Account, in accordance with applicable laws and the Rules. When Licensee chooses to make a payment with the Services, it authorizes the applicable Payee to submit charges (and, in the case of refunds, credits) to the registered Payment Account. Payzer will assist the Payee in accessing the Payment Account to process the Payment Transaction. Licensee is responsible for any charges and related fees that may be imposed as a result of use of a Payment Account. Payzer may delay payment processing of suspicious Payment Transactions or attempted Payment Transactions which may involve fraud or misconduct, or violate applicable law, this Agreement, the Rules, or other applicable Payzer policies, as determined in Payzer’s sole and absolute discretion. Licensee authorizes the charge or debit to its Payment Account, by Payzer as agent of the Payee, as necessary to complete processing of a Payment Transaction. Licensee also authorizes the crediting to the Payment Account, by Payzer as agent of the Payee, in connection with reversals, refunds, or adjustments. Payzer is not a party to a Payment Transaction for the purchase of products and services, and Payzer is not a buyer or seller in connection with any Payment Transaction.

***Managing a Payzer Debit Card(s).***

Licensee may apply for and, if approved and established by Payzer in its sole discretion, use its own Payzer Debit Card(s) to make payments and withdraw cash at retailers, ATM’s, and banks worldwide. Licensee may also accept and manage payments and transfers to and from it and its employees, subcontractors and other Payzer Software users in accordance with the terms and conditions of Payzer’s agreement with its banking partners. Licensee may request either unrestricted cards (may be used at retail point of sale and to withdraw cash), or restricted use cards (can be used at retail point of sale, but cannot be used to withdraw cash). To read the terms and conditions of this agreement for both unrestricted and restricted-use cards, click here: <https://www.payzer.com/terms/unrestricted-cards.pdf> and <https://www.payzer.com/terms/restricted-cards.pdf>. By making or accepting payments utilizing a Payzer Debit Card(s), Licensee represents and warrants to Payzer that it has read the terms and conditions of the above agreement and agrees to be bound by them.

***Permissible Payment Transactions.***

Licensee may only use the Services to process a Payment Transaction for products and services that are purchased from a business through a legitimate, bona fide sale of the products and services. The Services may not be used to process a Payment Transaction, or otherwise transfer money between Licensee and a business, that is unrelated to a purchase of a product or service. The Services may not be used to receive cash advances from anyone or to facilitate the purchase of cash equivalents (prepaid cards, money orders, gift certificates, etc.). Licensee may not use the Services to process Payment Transactions in connection with the sale or exchange of any illegal products or services or any other underlying illegal transaction. Licensee agrees that it will not use the Services to process Payment Transactions for any products or services that violate this

Agreement, the Rules, or applicable law. Failure to comply with these limitations may result in suspension or termination of the Services.

**General Rules and Descriptions.**

Licensee authorizes Payzer to obtain from time to time a credit report and/or to otherwise make credit or other background inquiries as Payzer deems appropriate to evaluate registration for or continued use of the Services. Payzer, in its sole and absolute discretion, may refuse to approve or may terminate existing registrations for the Services with or without cause or notice, other than any notice required by applicable law not waived herein. Licensee agrees to pay fees and other obligations arising from use of the Services as described in this Agreement. Payzer may require additional information as a condition of continued use of the Services, or to assist in determining whether to permit continued use of the Services.

**Service Fees.**

*Accepting Payments.* When Licensee receives payments from other users using Visa, Mastercard, Discover, or American Express cards, or using Payzer check acceptance (ACH and Mobile Check Deposit), Payzer or its partners will charge the fees as defined at <https://www.payzer.com/index/About#payzerpricing>. Licensee authorizes Payzer or its partners to debit its Bank Account provided during registration for such fees.

*Payzer Mobile or PC Card Readers.* At Licensee's option, Payzer will provide a card reader for either a PC or a mobile device. The cost for each card reader is a one-time cost based on the device selected. Prices for card readers are posted on the Payzer website.

*PCI Compliance.* Payzer does not charge a fee for PCI Compliance. However, each year Licensee is required by the payment networks to complete a PCI compliance self-assessment survey. Payzer provides access to a third party system to complete a PCI self-assessment survey (at no cost), and will provide assistance upon request. Failure to complete the survey within three months of the Effective Date and on an annual basis thereafter will result in the acquiring bank charging Licensee a \$19.99 monthly non-compliance fee.

*Payzer Debit Cards.* Licensee may request Payzer Debit Cards for itself, sub-contractors, or employees at a monthly cost of \$10. Payzer Debit Cards that Licensee requests are its responsibility, including any applicable bank fees.

*Making Payments with Registered Payment Accounts.* Payzer does not charge any fees to make payments using Payzer Debit Card(s) or other Payment Accounts that Licensee chooses to register.

*Payment of Fees and Returned items.* Payzer has the right to debit Licensee's Payzer Debit Card(s) for any fees owed to Payzer, or to cover any returned Payment Transactions. In the event that the Payzer Debit Card(s) does not have sufficient funds, Licensee agrees to allow Payzer to debit other Payment Accounts that it has registered.

*Payment Options Only Licensees that signed-up prior to 8/29/2019.* Inactive accounts that have not processed a Card Transaction in the current month, may be charged a \$20 monthly account fee at the discretion of Payzer. There is a monthly fee of \$10 for optional Check Acceptance Services (Mobile Check Deposit and ACH Payment Acceptance).

*Payzer Loans.* Licensee may optionally request the ability to initiate and manage loans for their customers using the Payzer Software. Access to this service is subject to approval by Payzer and its lending partners. Payzer or its partners will charge the fees as defined during registration, and Licensee authorizes Payzer or its partners to debit its Bank account provided during registration for such fees.

**Disputes.**

Payzer will not be a party to or otherwise assist in any dispute that may arise between Licensee and a third party with respect to a Payment Transaction. Licensee releases Payzer and its affiliates, agents, contractors, officers and employees (collectively, the "Payzer Parties"), from all claims, demands and damages (actual and consequential) arising out of or in any way connected with a dispute, and agrees to fully indemnify and hold Payzer and the Payzer Parties harmless therefrom. Licensee agrees that it will not involve Payzer in any litigation or other dispute arising out of or related to any transaction, agreement, or arrangement with any business or other third party in connection with the Services. If it attempts to do so, (i) Licensee shall pay all costs and attorneys' fees of Payzer and the Payzer Parties and shall provide indemnification as set forth below, and (ii) the jurisdiction for any such litigation or dispute shall be limited as set forth below.

**Refunds.**

Except as set forth in this Agreement, all Payment Transactions processed through the Services are non-refundable and non-reversible.

**Payzer Is Not a Banking Institution.**

Payzer processes Payment Transactions through the Services as an agent of and on behalf of businesses utilizing the Services. Payzer is not a bank or other chartered depository institution. Payzer will not take possession of or otherwise hold funds in connection with the processing of Payment Transactions.

**4. Term and Termination.** The term of this Agreement shall begin on the Effective Date and shall continue until the end of the current calendar year (the "Initial Term") and then shall automatically renew for successive one (1) year periods (each, a "Renewal Term", and collectively with the Initial Term, the "Term"). Either party may terminate this Agreement upon written notice with thirty (30) days advance written notice.

**5. Intellectual Property.** "Intellectual Property" includes all of the following owned by Payzer: (i) trademarks and service marks (registered and unregistered) and trade names, logos, corporate names, domain names and associated goodwill; (ii) patents, patentable inventions, computer programs, and software; (iii) databases; (iv) trade secrets and the right to limit their use or disclosure; (v) copyrights in all works, copyrightable works, including software programs, mask works and rights in data and data bases; (vi) domain names; (vii) Payzer Confidential Information; and (viii) the Payzer Software. The rights owned by Payzer in its Intellectual Property shall be defined, collectively, as "Intellectual Property Rights." Other than the express licenses granted by this Agreement, Payzer does not grant any right or license to Licensee by implication, estoppel or otherwise to the services or any Intellectual Property Rights of such party. Payzer shall retain all ownership rights, title, and interest in and to its own products and services and all related Intellectual Property Rights. Licensee shall not remove or destroy any proprietary, confidentiality, trademark, service mark, or copyright markings or notices placed upon or contained in any materials or documentation received in connection with this Agreement.

Licensee agrees that Payzer and/or its licensors own all legal right, title and interest in and to the Payzer Software, and all derivative works thereof, including all Intellectual Property Rights therein. Licensee hereby agrees to assign, and hereby assigns to Payzer, ownership of all Intellectual Property Rights associated with any derivative works, translations, customized versions, or other versions of the Payzer Software developed by Licensee or any third parties on behalf of Licensee. From time to time upon Payzer's request, Licensee shall confirm such assignment by execution and delivery of such assignments, confirmations of assignment, or other written instruments as Payzer may request. Further, to the extent that Licensee is vested with intellectual property rights inconsistent with the express intentions of this Agreement, Licensee agrees to execute all documents and to take all reasonable actions to vest in Payzer such Intellectual Property Rights as are consistent with the express intentions of this Agreement. Nothing in this Agreement gives Licensee a right to use any of Payzer's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features without written authorization from Payzer, which may be withheld in Payzer's sole discretion. Licensee agrees that the form and nature of the Payzer Software that Payzer provides may change without prior notice to Licensee and that future versions of the Payzer Software, if any, may be incompatible with applications developed by Licensee on previous versions of the Payzer Software.

**6. Confidentiality.** Licensee and Payzer acknowledge that either could be provided with certain non-public confidential and proprietary information concerning the business and operations of the other, excluding Content, and that such information constitutes confidential and proprietary information ("Confidential Information") owned solely by Licensee or Payzer, as applicable. During the Term or at any time following its termination neither party shall disclose any Confidential Information, including but not limited to information regarding the other's customers, product designs, processes, relations, suppliers to any third party. If the Confidential Information is embodied in tangible material, it must be labeled as "Confidential" or bear a similar legend. If the Confidential Information is disclosed orally, it must be identified as such at the time of disclosure. Each party undertakes to use all Confidential Information solely for the purpose of this Agreement, to disclose such information in its organization only on a need to know basis and to take reasonable precautions to avoid disclosure to parties for which the Confidential Information is not intended.

**7. Representations and Warranties.** Licensee represents and warrants that it has the necessary right and authority to provide the Content to Payzer in connection with the Services. Licensee represents and warrants that it shall only use the Payzer Software for the Limited Purpose in compliance with all applicable Rules, laws, regulations or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries, which laws may include restrictions on destinations, end users and end use) and on computers under its control. Licensee further represents and warrants that its use of the Payzer Software shall not: (i) violate any laws or regulations (including any privacy laws) or any obligations or restrictions imposed by any third party; (ii) contain any computer viruses, worms, or any software intended to damage or alter a computer system or data; (iii) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; or (iv) harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent. Licensee understands and agrees that personal information provided to Payzer in connection with the Services is subject to the Privacy Policy. Any Content provided to Payzer in connection with the Services may be shared with other users of the Services and, conversely, any Content provided to other users of the Services in connection with the Services may be shared with Payzer. Payzer does not represent or endorse, and shall

not be responsible for: (a) the reliability or performance of any business; (b) the safety, quality, accuracy, reliability, integrity or legality of any service or product obtained from a business; (c) the truth or accuracy of the Content; or (d) Licensee's ability to buy or redeem products and services using the Services. Payzer hereby disclaims any liability for any Content provided in the Services, and Licensee agrees and acknowledges that it is solely responsible for any such Content provided. Payzer reserves the right, but shall have no responsibility, to edit, modify, refuse to post or remove any Content, in whole or in part, that in its sole and absolute discretion is objectionable, erroneous, illegal, fraudulent or otherwise in violation of this Agreement.

**8. Audit.** Upon reasonable notice, Payzer may audit Licensee's compliance with the terms of this Agreement. This audit may be conducted at all sites where Licensee installs or uses the Payzer Software and will be conducted during normal business hours in a manner that minimizes disruption to Licensee's business. Payzer may use an independent auditor to assist in the audit provided such auditor has a confidentiality agreement in place with Payzer. To the extent that the audit reveals any underpayment due to Payzer, Licensee shall (a) promptly pay the money owed and (b) reimburse Payzer for the actual cost of the audit.

**9. Disclaimer of Warranties.** LICENSEE EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF THE PAYZER SOFTWARE IS AT LICENSEE'S SOLE RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: (A) THE PAYZER SOFTWARE AND ANY SUPPORT SERVICES ARE PROVIDED TO LICENSEE "AS IS", WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, AND (B) PAYZER AND ITS LICENSOR(S) EXPRESSLY DISCLAIM ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, NON- INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR THOSE ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. PAYZER AND ITS LICENSORS DO NOT WARRANT THAT THE PAYZER SOFTWARE SHALL PERFORM ERROR FREE OR WITHOUT INTERRUPTION, OR THAT IT IS FREE FROM BUGS, VIRUSES, HARMFUL CODE, ERRORS, OR OTHER PROGRAM OR SYSTEM LIMITATIONS.

**10. Limitation of Liability.** EXCEPT FOR DAMAGES INCURRED BY PAYZER FROM (I) ANY USE OF THE PAYZER SOFTWARE BEYOND THE SCOPE OF THE RIGHTS GRANTED IN THIS AGREEMENT BY PAYZER TO LICENSEE; (II) ANY MISAPPROPRIATION OR UNAUTHORIZED USE OF THE PAYZER SOFTWARE OR INTELLECTUAL PROPERTY RIGHTS OF PAYZER AND ITS LICENSORS; OR (III) LICENSEE'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS; NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA OR PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES TO THE OTHER PARTY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY KIND. IN NO EVENT SHALL PAYZER'S LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE IN RELATION TO THIS AGREEMENT, EXCEED THE TOTAL AGGREGATE AMOUNT OF FEES ACTUALLY RECEIVED AND RETAINED BY PAYZER (I.E., NOT REFUNDED OR PAID TO A THIRD PARTY) DURING THE TWELVE MONTH PERIOD PRIOR TO THE DATE SUCH LIABILITY AROSE.

**11. Indemnification.** Licensee agrees, at its own expense, to defend Payzer and the Payzer Parties from and against any action or proceeding brought by a third party against Payzer or the Payzer Parties arising out of or relating to: (i) any breach, failure or violation of any of the representations, warranties, covenants or undertakings of Licensee, (ii) the alleged or actual use or misuse of the Services or the Payzer Software by Licensee or its end users, (iii) the combination of the Payzer Software with other products commercialized directly or indirectly by Licensee, (iv) any third-party claims arising from Payzer's use of any Content; and/or (v) any use of the Payzer Software in violation of the personal or privacy rights of any individual or any applicable Rule, law or regulation (collectively, the "Claims"), and Licensee will indemnify and hold harmless Payzer and the Payzer Parties for all costs and damages (including, without limitation reasonable attorneys' fees, experts' fees and court costs) arising from any such Claims.

**12. Force Majeure.** Payzer's failure to perform, or delay in performing, any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, riots, acts of terrorism, strikes, fires, floods, acts of God, governmental restrictions, power failures, or damage or destruction of any network facilities or servers, shall not be deemed a breach of this Agreement.

**13. Miscellaneous.** This Agreement shall be governed by North Carolina law except for its conflicts of laws principles. The parties consent to the exclusive jurisdiction and venue of the state and federal courts for the State of North Carolina for any action arising out of this Agreement. For any action arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees. The Agreement constitutes the entire agreement between the parties with respect to its subject matter. Any conflicting or additional terms contained in additional documents (including but not limited to Licensee purchase order terms and conditions) or oral discussions are void and of no legal effect. Any modifications

to this Agreement may be made by Payzer upon written notice to Licensee. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, except that Payzer may assign this Agreement to any of its affiliates or related parties, or in connection with merger or acquisition, without the consent of Licensee. No failure to pursue any remedy, or delay in the exercise of any remedy, resulting from a breach of this Agreement by the non-breaching party shall be construed as a waiver of that breach by the non-breaching party or as a waiver of any subsequent or other breach. No waiver of any rights of a party or obligations of the other party shall be effective unless consented to in a writing signed by an authorized representative of the party against which enforcement is sought. This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same Agreement.