**YAYPAY TERMS OF SERVICE (CLICK-THROUGH)**

(Last Updated 7/16/19)

PLEASE READ THE TERMS AND CONDITIONS OF THESE TERMS OF SERVICE (THE “AGREEMENT”) CAREFULLY BEFORE PROCEEDING TO USE THE YAYPAY INC. (“YAYPAY”) SERVICES AS DEFINED BELOW.

BY USING THE SERVICES OR ACKNOWLEDGING “I ACCEPT”, LICENSEE ACCEPTS AND AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF LICENSEE, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND LICENSEE AND ITS AFFILIATES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF LICENSEE DOES NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, LICENSEE SHOULD NOT USE THE SERVICES.

THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT WITH RESPECT TO THE SERVICES BY AND BETWEEN LICENSEE AND YAYPAY.

1. **SCOPE OF AGREEMENT.** YayPay provides a SaaS-based accounts receivable management platform to businesses or sole proprietors (each, a “Licensee”) that wish to use YayPay to invoice their customers (each, a “Customer”), communicate with Customers regarding such invoices, and collect payments from them (the “Services”) using the YayPay website (the “Website”).

Using the YayPay platform located at the Website, Licensees perform the following tasks:

* Connect third-party accounting packages;
* Invoice Customers directly; and
* Issue payment reminders to Customers before payment due dates.

Any new features added to or augmenting the Services are also subject to this Agreement. For the avoidance of any doubt, YayPay does not collect funds from Customers.

1. **REGISTRATION AND SUBSCRIPTION.** Licensees register on the Website for the Services by providing to YayPay certain information including name, email, password, business name, and other information, such as country or currency. Licensee agrees to notify YayPay promptly if Licensee’s email address changes. As part of the registration process, Licensee will identify an administrative user name and password for Licensee’s account (“Account”). Licensee may use the administrative user name and password to create additional users (each with a user password). Licensee may not impersonate any person or entity or Licensee’s affiliations therewith. Licensee may not register for more than one Licensee Account without the express consent of YayPay. Licensee will promptly update Licensee’s Account information with any changes (for example, a change in Licensee’s billing address) that may occur.
2. **LICENSEE CONTENT.** Licensee is solely responsible for all data, information (including without limitation Customer information,) feedback, suggestions, text, content and other materials that Licensee uploads, posts, delivers, provides or otherwise transmits or stores in connection with or relating to the Services (“Licensee Content”). Licensee understands that the operation of the Services, including Licensee Content entered therein, may be unencrypted and involve (a) transmissions over various networks; (b) changes to conform and adapt to technical requirements of connecting networks or devices; and (c) transmission to YayPay’s third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Services. Accordingly, Licensee acknowledges that Licensee bears sole responsibility for adequate security, protection and backup of Licensee Content. YayPay will have no liability to Licensee for any unauthorized access or use of any Licensee Content, or any corruption, deletion, destruction or loss of any Licensee Content. Licensee shall promptly notify YayPay at support@yaypay.com if Licensee learns of a security breach related to the Services.
3. **EQUIPMENT AND PASSWORDS.** Licensee shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software (including without limitation third party accounting software,) operating system, networking, web servers, long distance and local telephone service (collectively, the “Equipment”). Licensee shall be responsible for ensuring that such Equipment is compatible with the Services (and, to the extent applicable, any software included as part of the Services) and complies with all configurations and specifications set forth in YayPay’s published policies then in effect. Licensee shall also be responsible for maintaining the security of the Equipment, Licensee’s Account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Licensee’s Account or the Equipment with or without Licensee’s knowledge or consent. Licensee shall be responsible for the acts or omissions of any person who accesses the Services using passwords or access procedures provided to or created by Licensee. YayPay reserves the right to refuse registration of, or to cancel, login IDs that violate this Agreement and conditions set forth herein. Licensee must notify YayPay’s Customer Support immediately upon any suspicion that a password has been lost or stolen or that someone has attempted or may attempt to make payments or otherwise use the Website without authorization. YayPay will not have any liability to Licensee for any unauthorized payment or transfer made using Licensee’s password that occurs before Licensee has notified YayPay of possible unauthorized use and YayPay has had a reasonable opportunity to act on that notice. If Licensee chooses to access Licensee’s account through Intuit, Facebook, Google or Linkedin, Licensee is making a determination that those login procedures are sufficiently secure for Licensee’s purposes.
4. **SERVICES AS A TOOL.**
	1. **Usage Terms.** The Services are a tool that allows Licensee to access and manage account information and interactions with Customers and YayPay’s service providers (“Service Providers”), and Licensee will fulfill all of its obligations to each Customer with which it engages and will resolve any Customer dispute or complaint directly with such Customer. YayPay is not responsible in any way for Licensee’s decision to extend or to revoke credit from any of Licensee’s Customers. Licensee understands and agrees that the Licensee has full control over the use of all features offered on the YayPay platform, including all monitoring, payments, collection and lettering tools offered through the Services, and that, expect for communications to Customers regarding overdue payment obligations, YayPay does not engage in any action that may be deemed a collections activity on behalf of the Licensee. Licensee further understands and agrees that YayPay does not hold, receive or disburse funds on Licensee’s behalf.
	2. **Support Services.** YayPay may provide technical support services, including telephonically or through email in accordance with YayPay’s standard practice. YayPay reserves the right to access Licensee’s Account in order to respond to Licensee’s requests for technical support. Licensee will provide reasonable cooperation, assistance, information and access to YayPay as may be necessary to initiate and facilitate Licensee’s use of the Services.
	3. **Licensee Customer Service.** Licensee is solely responsible for all Customer service issues not relating to the Services, including, without limitation, issues relating to Licensee’s goods or services, refunds and adjustments, rebates, functionality and warranty, technical support, and feedback concerning experiences with Licensee’s personnel, policies or processes.
	4. **Analytics.** YayPay may use analytics to monitor, identify, and collect trend and usage statistics with respect to Licensee and organizations through the Website and Services, including, without limitation, how often different features of the Services or the Website are used, how often different buttons and menu items are clicked, execution time for different operations, error reports, download locations, versions, platform information, application and Services, or the Website usage, features usage, exception tracking, and operating system information (collectively, “Analytical Information”). Such Analytical Information does not include any information that personally identifies the Customer. Licensee hereby agrees that YayPay may collect such Analytical Information and use it solely to provide, secure, operate, manage, maintain, and enhance the Services and the Website, to develop new or enhanced functionality and for other YayPay business purposes subject to the provisions of this Section.
5. **INVOICING AND CUSTOMER COMMUNICATIONS.**
	1. **Data Integrity.** Licensee may log into the YayPay platform in order to enter information for its Customers including name, whether or not the Customer is a natural person, location and time zone data, and other contact information. YayPay will only collect the last four digits of Customer bank account numbers to facilitate payment processing through YayPay’s Service Providers. Licensee agrees that (a) the Services depend on the correct input of the Licensee Content, (b) Licensee bears responsibility and liability for the completeness and accuracy of the information that Licensee provides, including the amounts and details of the amounts owed and (c) YayPay will not assume any responsibility for, or undertake to verify, the accuracy or completeness of the Licensee Content. YayPay shall have no obligation to screen, edit, monitor, or store Licensee Content or any data or materials generated therefrom or in connection therewith. YayPay has the right, but not the obligation, to monitor the Services or Licensee Content. Licensee further agrees that YayPay may remove or disable any Licensee Content at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Licensee Content), or for no reason at all.
	2. **Accuracy and Timeliness of Payment Information.** Invoices to be sent to Customers created using the Services will be prepared using information that is provided by Licensee. Licensee is responsible for the accuracy and completeness of all information on which invoices to Customers are based, including, without limitation, the identity of, and contact information for, Customers who are being invoiced, the transactions for which the Licensee is invoicing them, and the cost thereof, including applicable discounts and taxes, if any. Except as expressly permitted by YayPay, Licensee will not include personal health information (as defined by HIPAA) or any content containing information relating to a Customer’s medical conditions or care in the data provided to YayPay except for amounts owed and Customer contract information. It is solely Licensee’s obligation to inform YayPay as to any errors contained in any invoices created using the Services. It is also solely Licensee’s obligation for determining the schedule on which invoices will be created and distributed. Licensee will promptly notify YayPay upon receiving any notice of bankruptcy relating to any Customer accounts.
	3. **Email and Text Reminders.** Licensees manage invoices by combining them into statements, and can include reminders on statements and deliver statements and invoices to Licensee’s Customers. The automated reminder messages sent by Licensee through the YayPay platform can take the form of email reminders or text messages. LICENSEES HAVE THE SOLE AUTHORITY TO DETERMINE WHEN AND WHETHER AN EMAIL, TEXT, OR PHONE CALL OCCURS AND CAN ENABLE OR DISABLE THE MESSAGING FEATURE AT ANY TIME, ON A CUSTOMER-BY-CUSTOMER BASIS (BUT NOT ON AN INDIVIDUAL-BY INDIVIDUAL (E.G. EMPLOYEE) BASIS WITHIN CUSTOMER. Email statements, payment reminders and notices regarding collection of past due amounts may include “Powered by YayPay” or similar messaging at the bottom of the email communication. For every invoice or collection reminder or other notice sent outside of Licensee’s organization via the Services, Licensee acknowledges and agrees that YayPay shall have the right to automatically add an identifying footer in accordance with YayPay’s standard policies then in effect. Email statements sent prior to a due date will not include, or link to, a demand for payment and will include language explicitly stating that such email is not a collection effort and does not include a demand for payment. Email statements will explain how to dispute invoices and include the ability to opt out of email payment reminders.

YAYPAY RESERVES THE RIGHT TO REFUSE TO TRANSMIT ANY INVOICE OR PAYMENT REMINDER COMMUNICATIONS TO ANY CUSTOMER, AT ANY TIME FOR ANY OR NO REASON.

1. **LICENSE OF SERVICES.** Subject to the terms and conditions of this Agreement, YayPay hereby grants Licensee a non-transferable, non-sublicensable and non-exclusive right and license to use the Services, provided that Licensee shall not (and shall not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code or sell, assign, sublicense or otherwise transfer any right in any such materials. Any rights not expressly granted herein are reserved and no license or right to use any trademark of YayPay or any third party is granted to Licensee in connection with the Services.

Subject to the license grant herein, Licensee shall own all right, title and interest (including all intellectual property and other proprietary rights) in and to Licensee Content. Notwithstanding the foregoing, YayPay shall own all rights, title, and interest in and to any materials, products, or services created by or on behalf of YayPay in any form containing or derived from the Licensee Content (or any part thereof), and Licensee shall have no ownership, authorship, or moral rights therein and may use them only as permitted under the license granted by YayPay above. By posting Licensee Content on or through the Services, Licensee hereby does and shall grant YayPay a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid, sublicensable and transferable license to use, modify, reproduce, distribute, display, publish and perform Licensee Content in connection with the Services and for YayPay’s business use.

1. **THIRD PARTY SERVICE PROVIDERS.** The YayPay platform enables Licensee to send statements via text and email to Customers. YayPay outsources the email transmission to its third-party partner, SendGrid, which maps the email address to the YayPay domain. Text messages are sent through YayPay’s third party partner, Twilio.

Customers can pay Licensee invoices using PayPal, the automated clearinghouse system (“ACH”) or by debit or credit card entirely through third-party Service Providers, the links to which are provided by YayPay. In the event Licensee is not approved to open an account with YayPay’s primary payment processor(s), or such payment processor(s) at any time are unwilling to process payments with respect to Licensee’s account, YayPay may suspend or terminate Licensee’s use of the invoice payment functionality in Customer invoices. Additional fees may apply.

YayPay reserves the right to change its primary processor(s) for credit card, ACH and/or other electronic payment processing at any time in its sole discretion.

YayPay expressly disclaims any liability arising from Licensee’s engagement of any of the Service Providers whose services may be accessed as part of the Services and Licensee hereby acknowledges and agrees that YayPay shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of any such Service Provider.

1. **PAYMENT TERMS.** To the extent the Services or any portion thereof are made available for any fee, Licensee will be required to select a payment plan and provide YayPay accurate information. Licensee represents and warrants to YayPay that such information is true. Licensee agrees to pay YayPay the amount that is specified in the payment plan in accordance with the terms of such plan and this Agreement. Licensee hereby authorizes YayPay to invoice Licensee in advance on a periodic basis in accordance with the terms of the applicable payment plan until Licensee terminates Licensee’s account, and Licensee further agrees to pay any fees so incurred. All Services fees and taxes are due upon receipt of YayPay’s invoice. If Licensee disputes any fees, Licensee shall provide YayPay with written notice thirty (30) days after the date that YayPay invoices Licensee. YayPay reserves the right to change the fees charged to Licensee for the Services. If YayPay does change fees, YayPay will provide notice of the change on the Site or in an email to Licensee, at YayPay’s option, at least thirty (30) days before the change is to take effect. If the pricing changes are not acceptable, Licensee’s sole and exclusive remedy shall be to stop using the Services and cancel Licensee’s Account by notifying YayPay as described below. Licensee’s continued use of the Services after the price change becomes effective constitute Licensee’s agreement to pay the changed amount. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. Licensee shall be responsible for all taxes associated with Services other than U.S. taxes based on YayPay’s net income. Services fees are not refundable even upon termination of Licensee’s account as provided herein.
2. **TERM AND TERMINATION.**
	1. **Term.** The term of this Agreement begins on the date set forth in the applicable order and will remain in effect, unless and until terminated in accordance with the provisions set forth in this Agreement or in the applicable order (the “Term”). The specific Term for the Services will be as set forth in the corresponding order, and is non-cancelable except as expressly set forth herein.

The Term shall automatically renew for an additional Term of twelve (12) consecutive months, unless one party provides the other party with notice of non-renewal not less than thirty (30) days prior to the expiration of the then-current Term.

* 1. **Termination**. Either party may, at its option, terminate this Agreement or any order if the other party: (i) breaches any material obligation under this Agreement or any order and such breach is not cured within thirty (30) days after the receipt of written notice of the alleged breach; (ii) in the case of Licensee, admits in writing Licensee’s inability to pay Licensee’s debts generally as they become due; or (iii) institutes proceedings to be adjudicated a voluntary bankrupt, or consents to the filing of a petition of bankruptcy against that party. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys’ fees.

Licensee may terminate Licensee’s account at any time by sending a cancellation request to support@yaypay.com.

**Effect of Termination or Expiration**. In the event of any termination or expiration of this Agreement:

* + 1. Licensee will pay YayPay for all undisputed fees then-owing, but not yet paid (pursuant to the order) that have been incurred through the effective date of termination or expiration;
		2. there shall be no right of refund of any prepaid but unused Services fees whatsoever;
		3. all rights granted hereunder to Licensee will immediately cease, and Licensee will immediately cease all access of the Services and the Website;
		4. each party will either return to the other party (or provide the other party with written certification of the destruction of) all documents, computer files, and other materials containing any Confidential Information of such other party that are in the first party’s possession or control;
		5. YayPay has no obligation to retain any Licensee Content after the Term and may destroy all such Licensee Content in its possession within ninety (90) days after the end of the Term, provided that, upon Licensee’s written request within thirty (30) days after the effective date or termination, YayPay will deliver to Licensee a copy of Licensee Content then currently stored by YayPay; and
		6. any expiration or termination of this Agreement shall not modify any rights or obligations of a party hereto which arose prior to such expiration or termination.
1. **INTELLECTUAL PROPERTY.**
	1. **General.** Each party agrees that except and to the extent provided herein, it shall acquire no right, title or interest in or to the other party’s information, data base rights, data, tools, processes or methods, or any patents, copyrights, trademarks, service marks, trade secrets (or any improvements, updates or upgrades thereto), or any other intellectual property rights of the other party by virtue of the provision or use of the Services and materials delivered pursuant to this Agreement.
	2. **YayPay Services.** As between YayPay and Licensee, YayPay shall own all right, title, and interest in and to the Services and the Website, including all source code, object code, operating instructions, and interfaces developed for or relating to the Services and the Website, together with all modifications, enhancements, revisions, changes, copies, partial copies, translations, compilations, and derivative works thereto, including all copyrights and other intellectual property rights relating thereto. Licensee will have no rights with respect to the YayPay intellectual property other than those expressly granted under this Agreement.
2. **CONFIDENTIALITY.**
	1. **Definition of Confidential Information.** For the purposes of this Agreement, “Confidential Information” means: (a) with respect to YayPay, the Services, any and all source code relating thereto, all pricing and fees relating to the Services, and any related services, and any other non-public information or material regarding YayPay’s legal or business affairs, financing, or customers, and (b) with respect to Licensee, any non-public information or material regarding Licensee’s legal or business affairs, products, services, financing, or customers. Notwithstanding any of the foregoing, Confidential Information does not include information which: (i) is or becomes public knowledge without any action by, or involvement of, the party to which the Confidential Information is disclosed (the “Receiving Party”); (ii) is documented as being known to the Receiving Party prior to its disclosure by the other Party (the “Disclosing Party”); (iii) is independently developed by the Receiving Party without reference or access to the Confidential Information of the Disclosing Party and is so documented; or (iv) is obtained by the Receiving Party without restrictions on use or disclosure from a third person who, to the Receiving Party’s knowledge, did not receive it, directly or indirectly, from the Disclosing Party.
	2. **Use and Disclosure of Confidential Information.** The Receiving Party will, with respect to any Confidential Information of the Disclosing Party: (i) use such Confidential Information only in connection with the Receiving Party’s performance of its obligations and exercise of its rights under this Agreement; (ii) restrict disclosure of such Confidential Information within the Receiving Party’s organization to only those employees and consultants of the Receiving Party who have a need to know such Confidential Information in connection with the Receiving Party’s performance of this Agreement and (iii) except as expressly contemplated under the preceding clause (ii), not disclose such Confidential Information to any third party unless authorized in writing by the Disclosing Party to do so.
	3. **Protection of Confidential Information.** The Receiving Party will protect the confidentiality of any Confidential Information disclosed by the Disclosing Party using at least the degree of care that it uses to protect its own confidential information (but no less than a reasonable degree of care).
	4. **Compliance by Personnel.** The Receiving Party will, prior to providing any employee, consultant, or vendor access to any Confidential Information of the Disclosing Party, inform such employee or consultant, or vendor of the confidential nature of such Confidential Information and require such employee, consultant, or vendor to comply with the Receiving Party’s obligations hereunder with respect to such Confidential Information. The Receiving Party will be responsible to the Disclosing Party for any violation of this Section by any such employee, consultant, or vendor.
	5. **Required Disclosures.** In the event the Receiving Party becomes or may become legally compelled to disclose any Confidential Information (whether by deposition, interrogatory, request for documents, subpoena, civil investigative demand or other process, or otherwise), the Receiving Party shall provide to the Disclosing Party prompt prior written notice of such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Section. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Receiving Party shall furnish only that portion of the Confidential Information which it is advised by counsel is legally required to be disclosed, and shall use its best efforts to insure that confidential treatment shall be afforded such disclosed portion of the Confidential Information.
3. **REPRESENTATIONS AND WARRANTIES; DISCLAIMER.**
	1. **Mutual Representations and Warranties.** Each party represents and warrants that it has the full right, power, and authority to enter into this Agreement, to discharge its obligations hereunder, and to grant the rights granted hereunder.
	2. **Additional Representations and Warranties of YayPay.** The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by YayPay or by Service Providers, or because of other causes beyond YayPay’s reasonable control, but YayPay shall use reasonable efforts to provide advance notice in writing or by email of any scheduled Services disruption. YayPay warrants to Licensee that the Services will perform substantially in accordance with the description on the Website. If Services do not conform to the foregoing warranty, YayPay shall use commercially reasonable efforts to correct the affected Services. If YayPay is unable to correct such Services using commercially reasonable efforts, Licensee’s sole and exclusive remedy shall be to stop using the Services and cancel the YayPay account. The foregoing states YayPay’s sole and exclusive warranty and Licensee’s sole and exclusive remedy. YayPay makes no warranty to Customers. Licensee assumes sole responsibility and liability for results obtained from the use of the Services. YayPay shall not have any liability for any claims, losses, or damage caused by errors or omissions in any information provided to YayPay in connection with the Services or any actions taken by YayPay in accordance with directions provided by Licensee. YayPay shall not have any liability for any claims, losses or damages arising out of or in connection with use of any third-party products, services, software or Websites that are accessed via links on the Website.
	3. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS LIMITED WARRANTY SECTION, THE SERVICES, INCLUDING THE WEBSITE AND ANY REPORTS, AND ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND YAYPAY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF THE TRADE. LICENSEE ACKNOWLEDGES THAT YAYPAY DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY LICENSEE FROM YAYPAY OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT. LICENSEE HEREBY ACKNOWLEDGES THAT INVOICING, REMINDER AND COLLECTION ACTIVITIES MAY NOT ACHIEVE THE RESULT DESCRIBED, INTENDED, OR EXPECTED, INCLUDING WITHOUT LIMITATION ANY INCREASE IN AMOUNTS RECEIVED BY LICENSEE.
	4. **Additional Representations and Warranties of Licensee.** Licensee represents and warrants to YayPay that (i) the name identified by Licensee during registered is Licensee’s name or business name under which Licensee sells goods or services; (ii) Licensee owns all Licensee Content or has obtained all permissions, releases, rights or licenses required to engage in Licensee’s posting and other activities (and allow YayPay to perform its obligations) in connection with the Services without obtaining any further releases or consents; (iii) Licensee Content and other activities in connection with the Services, and YayPay’s exercise of all rights and license granted by Licensee herein, do not and will not violate, infringe, or misappropriate any third party’s copyright, trademark, right of privacy or publicity, or other personal or proprietary right, nor does Licensee Content contain any matter that is defamatory, obscene, unlawful, threatening, abusive, tortious, offensive or harassing or that may expose YayPay to harm or liability of any nature; and (iv) Licensee is eighteen (18) years of age or older. Licensee represents and warrants that the Customer information that Licensee inputs using the Services is complete and accurately identifies the Customer, that the amounts invoiced are owed pursuant to a contractual relationship between Licensee and the Customer, the schedule that Licensee selects for invoicing reflects the payment terms to which the Customer has agreed, and invoicing, collection reminders and, if applicable, collection calls to a Customer do not violate the terms of any agreement between Licensee and Customer.

Licensee represents and warrants that Licensee shall, and shall continue to, collect and use any Licensee Content as well as use any Customer-related data generated or reported through the Services in accordance with all applicable foreign, federal, state and local laws and regulations of all applicable jurisdictions and any and all amendments thereto (collectively, “Laws”).

Licensee represents and warrants that Licensee has and will maintain a privacy policy that fully and accurately discloses to Customers that information is collected, disclosed to and processed by third party providers like YayPay in the manner contemplated by the Services. Licensee shall be responsible for ensuring that the input of Licensee Content conforms to Licensee’s privacy policies (including any applicable third-party privacy policies to which Customer or Customer’s data has been associated with in conjunction Licensee’s relationship with Customer) and all applicable laws, rules and regulations.

Licensee agrees to comply with all applicable laws and regulations relating to the export of the Services outside of the United States.

1. **LIMITATION OF LIABILITY.**
	1. **Liability Exclusion.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY (NOR TO ANY PERSON CLAIMING RIGHTS DERIVED FROM SUCH OTHER PARTY’S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION LOST REVENUES OR PROFITS, OR LOSS OF GOODWILL OR REPUTATION) WITH RESPECT TO ANY CLAIMS BASED ON CONTRACT, TORT OR OTHERWISE (INCLUDING NEGLIGENCE AND STRICT LIABILITY) ARISING OUT OF OR RELATING TO THE SERVICES OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF WHETHER THE PARTY LIABLE OR ALLEGEDLY LIABLE WAS ADVISED, HAD OTHER REASON TO KNOW, OR IN FACT KNEW OF THE POSSIBILITY THEREOF.

EACH PARTY’S MAXIMUM LIABILITY ARISING OUT OF OR RELATING TO THE SERVICES OR OTHERWISE ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY, OR OTHERWISE), WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE FEES PAID OR PAYABLE TO YAYPAY BY LICENSEE UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM ARISES.

* 1. **Exceptions.** THE FOREGOING EXCLUSIONS AND LIMITATIONS OF LIABILITY SET FORTH ABOVE SHALL NOT APPLY TO (I) THE FAILURE OF LICENSEE TO MAKE PAYMENTS, (II) LIABILITY RESULTING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY, (III) USE OF THE SERVICES OR THE WEBSITE OUTSIDE THE SCOPE OF THE APPLICABLE RIGHTS GRANTED PURSUANT TO THIS AGREEMENT, OR (IV) LIABILITY RESULTING FROM A PARTY’S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS HEREUNDER.
1. **INDEMNIFICATION.** Licensee shall defend, indemnify, and hold harmless YayPay from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from Licensee’s breach of this Agreement, any Licensee Content, violations of applicable Laws including HIPAA or its equivalents, or Licensee’s other access, contribution to, use or misuse of the Services. YayPay shall provide notice to Licensee of any such claim, suit or demand. YayPay reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this Section. In such case, Licensee agrees to cooperate with any reasonable requests assisting YayPay’s defense of such matter.
2. **MISCELLANEOUS PROVISIONS.**
	1. **Notices.** Licensee may give notice to YayPay by (i) personal service, (ii) registered or certified mail, postage prepaid, return receipt requested, or (iii) nationally or internationally recognized private courier service, to YayPay Inc. 214 W 29th Street, New York, New York 10001, Attention: CEO or such other address designated by YayPay.

YayPay may give notice to Licensee by means of a general notice on the Website or by electronic mail to the e-mail address of Licensee set forth in YayPay’s account information.

Notices so given will be effective upon (a) receipt by the party to which notice is given; or (b) on the fifth (5th) business day following mailing, whichever occurs first.

* 1. **Relationship of the Parties.** Each party is an independent contractor of the other party. Nothing herein will constitute a partnership between or joint venture by the parties, or constitute either party the agent of the other.
	2. **Assignment.** Licensee may not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior, written consent of YayPay. YayPay may, upon written notice to Licensee and without the consent of Licensee, assign or otherwise transfer this Agreement: (i) to any of its Affiliates, or (ii) in connection with a change of control transaction (whether by merger, consolidation, sale of equity interests, sale of all or substantially all assets, or otherwise). Any assignment or other transfer in violation of this Section will be null and void. Subject to the foregoing, this Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns.
	3. **Force Majeure.** Except with respect to failure to pay any amount due under this Agreement, nonperformance of either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, disruption or unavailability of the internet, governmental acts, orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing party.
	4. **Choice of Law and Exclusive Forum.** This Agreement, and any disputes directly or indirectly arising from or relating to this Agreement, will be governed by and construed in accordance with the laws of the State of New York, without regard to principles of conflicts of law.

The parties hereby consent and agree to the exclusive jurisdiction of the state and federal courts located in New York, in New York County, in the borough of Manhattan for all suits, actions, or proceedings directly or indirectly arising out of or relating to this Agreement, and waive any and all objections to such courts, including but not limited to objections based on improper venue or inconvenient forum, and each party hereby irrevocably submits to the jurisdiction of such courts in any suits, actions or proceedings arising out of or relating to this Agreement.

* 1. **Modification.** YayPay may modify this Agreement by updating such Agreement and posting such updated Agreement on its Website.
	2. **No Waiver.** The rights and remedies of the parties to this Agreement are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.
	3. **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the parties’ intent.
	4. **Entire Agreement.** This Agreement (including all order(s) and any referenced and/or attached policies, documents and Exhibits) contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions, and neither party has relied upon any representation, express or implied, not contained in this Agreement. In the event of a conflict between the terms of an order and this Agreement, the terms of this Agreement shall govern.
	5. **Use of Licensee Name.** Licensee grants YayPay the right to use Licensee’s name and logo and the name of the YayPay Services that Licensee uses for advertising, publicity and promotional purposes.
	6. **Third Party Beneficiaries.** Except as set forth herein, there are no third party beneficiaries to this Agreement.
	7. **Subcontracting.** YayPay may subcontract any or all of the Services without notice to Licensee.

**YayPay Application Uptime SLA**

Business Hours: 8am-8pm EST

For the avoidance of doubt, “period” is defined as the month of service or 1/12 of the annual fee.

|  |  |
| --- | --- |
| **Application Uptime** | **Penalty** |
| 99.7% | None |
| Below 99.7% | 5% of fees in period |
| Below 99% | 10% of fees in period |
| Below 98% | 15% of fees in period |
| Below 95% | Full refund for period |

In the event of Persistent Outages, Licensee shall have the right to terminate this agreement without penalty. Persistent Outages is defined as three (3) or more occurrences in consecutive months (periods) whereby YayPay has not met the Application Uptime SLA of 99.7%.

**YayPay Support SLA**

Prioritization of cases YayPay assigns priority levels to cases to allow Technical Support to maximize service levels for each customer. Depending on technical and business needs, YayPay works with each Support Liaison to set the correct priority level for each case. YayPay recognizes that the customer’s business and technical priorities may evolve over time. If the Support Liaison feels that the priority of the case should change, the Technical Support Engineer is available to reprioritize the case. YayPay reserves the right to: 1. Make the final determination on the priority level of a case 2. Downgrade the priority of a case and notify the Support Liaison of this action if the Support Liaison fails to communicate with YayPay Technical Support in a timely manner YayPay shall make reasonable commercial efforts to comply with the following guidelines when involved in problem resolution.

* Supported Support Channels

Email - support@yaypay.com

* Support Hours

7AM – 5PM EST on Weekdays

* Severity and Resolution Time SLA

Response and Resolution times assume the request came in during Support Hours.

* Severity 1
* Data Breaches or Data Leakage Reports, including reports of the potential security issues, data sent to the wrong person, customer statement link shared with incorrect person.
* YayPay Application or API is down

Response Time – under 1 hour

Resolution Time – under 2 hours

* Severity 2
* A System workflow is halted and there is a severe impact on the customer’s ability to communicate with a particular customer(s) in the workflow
* Mass email delivery is sending incorrect data, including invoice PDFs.
* Product Bug that are blocking system usage and that do not have a workaround
* ERP Sync is not working for more than 24 hours
* SalesForce Connector is not working

Response Time – under 2 hours

Resolution Time – under 4 hours

* Severity 3
* User access issues (password reset, changing user roles, enabling/disabling users)
* Reconciliation Errors (accounting data reconciliation between ERP system and YayPay)
* Invoice PDFs issues (incorrect PDFs are generated, not all invoice PDF are retrieved from the ERP system)
* Customer Payments are not processed as expected
* Email Connection Errors (SMTP/IMAP)
* Product Bug that Does have a workaround
* Other non-blocking issues

Response Time – under 4 hours

Resolution Time – under 8 hours

* Severity 4
* Product Enhancement Requests
* Product Questions
* Training Requests
* System Configuration Requests
* Special Reports or Data Retrieval Requests

Response Time – under 6 hours

Resolution Time – under 24 hours