

## Paycor General Terms and Conditions

These General Terms and Conditions are incorporated by reference into any Paycor Order for Services ("Order(s)"), Exhibits, Supplemental Agreement (as defined below), Statement of Work ("SOW"), Addendum or Amendment (collectively, the "Agreement") between Paycor, Inc. ("Paycor") and the party identified in the Order ("Client"). This Agreement is effective as of the date of the initial Order ("Effective Date").

### 1. SERVICES AND OBLIGATIONS

**1.1 Services.** Paycor will provide the services identified in an Order or otherwise agreed to by the parties ("Service(s)") and in accordance with Paycor's user instructions and technical specifications ("Documentation"). Paycor grants to Client a non-exclusive, non-transferable license to access and use the Services and Documentation. Client acknowledges that certain Services may be performed by an affiliate of Paycor. Client is responsible for all hardware, software applications and internet connectivity necessary to access and use the Services and its own activities via the internet.

**1.2 Due Diligence.** Client authorizes Paycor or its affiliates or agents to perform due diligence checks and Paycor reserves the right to decline to provide Services based upon the due diligence process, which may include but is not limited to business credit review, bank account verification, fraud review and judgment/bankruptcy history review.

**1.3 Access to the Services.** Client is being provided the Services for its internal business use and will not use the Services for any other purpose, including to provide similar services to a third party. Client will permit access to the Services solely to its authorized users ("User(s)") and to no other individuals. Client is solely responsible for its Users' compliance with this Agreement and any activities taken under its or its Users(s) accounts and credentials. Client will promptly notify Paycor if it becomes aware of any unauthorized access or use of the Services. Paycor may monitor Client's access and use of the Services and, upon Client's reasonable request, will lock out or inactivate a User(s). Client shall not: (i) modify, copy, or create any derivative works of the Services; (ii) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise make the Services available to any third party, other than as permitted herein; (iii) access the Services in order to build any commercially available product or service; (iv) copy any features, functions, integrations, interfaces, or graphics of the Services; (v) upload, send or store infringing, unlawful, obscene, or defamatory material or other material that is prohibited by Paycor or Paycor third-party policies or applicable law into the Services; (vi) reverse engineer, decompile or disassemble the Service; (vii) use any robot, spider, scraper or other automated means to access the Service; (viii) circumvent, disable or otherwise interfere with security-related features or knowingly send or store Malicious Code in connection with the Services; or (ix) access or use the Services with third-party programs with which the Services are not intended for use.

**1.4 Use by Third Parties.** Subject to the terms of this Agreement, Client may permit access and use of the Services by its third-party contractors and consultants; however, Client shall not provide access to the Services to any individual or entity that provides payroll and/or human capital management services. Client is responsible for ensuring that all such third parties abide by the terms of this Agreement, and Client shall be responsible and liable for such third-parties compliance with, or breach of this Agreement and any action taken by Paycor pursuant to instruction of any such third-party.

**1.5 Information Security.** Client authorizes Paycor and/or its affiliates to process data and information provided to or collected by Paycor and/or its affiliates for the performance of the Services, which is supplied by Client, a User or a third party on Client's behalf ("Client Data") in provision and performance of the Services, and such use will be governed by the Paycor Data Processing Addendum ("DPA"), available at <https://www.paycor.com/data-processing-addendums>, as may be amended by Paycor from time-to-time in its discretion, and Privacy Policy, available at: <https://www.paycor.com/privacy-policy>, which are hereby incorporated into and made a part of this Agreement. Notwithstanding, Client acknowledges that no information security safeguards are failproof and that Paycor does not guarantee that the Services, its systems and the information and content therein (including, as applicable, Client Data and Confidential Information (as defined below)) cannot be accessed by unauthorized persons capable of overcoming such safeguards. Paycor shall not be responsible or liable for any such unauthorized access, and in no event shall any unauthorized access constitute a breach by Paycor of its confidentiality obligations hereunder.

**1.6 Third-Party Services.** Paycor and/or its affiliates may make available third-party applications and/or services through Paycor for use in connection with the Paycor Services which are not part of the Services ("Third-Party Services"). Client agrees that Third-Party Services may be subject to terms between Client and such third-party. Client authorizes Paycor to exchange Client Data with such third-party to furnish the Third-Party Services to Client.

**1.7 Services Appendix.** Certain Services and Third-Party Services are subject to additional terms which are described in the Services Appendix located at <https://www.paycor.com/services-appendix>, as may be updated from time-to-time.

### 1.8 Client Data, Marks, and Obligations.

**A. Client Data.** Client is solely responsible for all Client Data provided to Paycor, including during Implementation or via the Services. Client shall timely supply, review, and verify the accuracy of all Client Data necessary for the performance of the Services. Client will promptly notify Paycor of any errors, omissions, or discrepancies in the Client Data (including documents or reports generated using Client Data) and will promptly correct such inaccuracies. Client acknowledges that Paycor's performance of Services is dependent on Client complying with the foregoing obligations, and Client will be responsible for the consequences of any instructions it provides to Paycor (including any delays associated with errors in the Client Data). For certain Services, Client Data may include Personal Data (all references to Personal Data in this Agreement shall have the meaning as defined in the DPA). Client shall only input and store Personal Data in the areas of those specific Services where Personal Data is necessary and relevant to accomplish the purpose and functionality of such Services. Client is the exclusive owner of all Client Data. Client grants Paycor a royalty-free, worldwide license to access, copy, modify and otherwise use the Client Data as necessary to administer the Services and perform Paycor's obligations. Client further authorizes Paycor to access and use Client Data (i) for the purposes of providing upgrades, fixes, or other modifications of or to the Services ("Upgrades") (ii) for purposes of evolving, training, improving, optimizing, developing and marketing the Services and developing and offering new services or features (including datasets based on, derived from, or including such Client Data) and/or (iii) for industry benchmarking purposes, including conducting or participating in research and analysis; provided, however, that Client will not be identifiable as a result of the same. Paycor may use Client Data that is aggregated, anonymized, and/or deidentified (so long as no attempt to re-identify the data is made) for any lawful purpose at Paycor's discretion. Client will have no ownership interest in aggregated, anonymized, and/or deidentified data, and such data will not be considered Client Data or otherwise Client Confidential Information.

**B. Client Marks.** Client's name, logo, trademarks, and other identifiable marks ("Client Marks") are the exclusive property of Client. Client agrees that Paycor may use Client Marks solely to identify Client as a client of Paycor in marketing materials including promotions, exhibits, case study analysis and on its website(s).

**C. User Information.** Client will ensure that all Client account information and User contact information is complete and accurate and Paycor is not responsible for information that is sent to an inaccurate or outdated Client or User contact.

**D. Compliance with Applicable Law.** Client is responsible for compliance with all laws and regulations applicable to its use of the Services, including as pertains to any use of information and material generated by or through the Services, or with any equipment rented or purchased from Paycor; including, without limitation, wage, hour and labor laws, tax related laws, and laws addressing the collection, storage, notification and receipt of consents related to privacy, data, security, and biometric information, whether relating to Client's internal information or information collected and provided to Paycor by Client about its employees, agents and independent contractors. For avoidance of doubt, Client will be solely responsible for (i) how it uses the Services to comply with its own legal and regulatory requirements, (ii) the consequences of any instructions that it gives to Paycor, including as part of the implementation of the Services, (iii) obtaining any required consent of employees and/or contractors to use Client Data in connection with the Services, and (iv) having a legal basis for the processing of Client Data. Paycor may rely upon information provided by Client to perform the Services, whether received directly from Client, User(s) or through a prior or current third-party service provider of Client. The Services do not include any legal, financial, regulatory, benefits, accounting, or tax advice. Paycor will not be held liable for Client's use of any Services or equipment provided by Paycor hereunder. Client will not use, or allow the use of, the Services in contravention of any federal, state, local, foreign, or other law, rule, or regulation.

**E. Record Keeping.** Client is responsible for maintaining complete and accurate books and records, including copies of all source documents (including but not limited to payroll, tax, and time records), records and other information provided to Paycor, by or on behalf of Client. Paycor is not Client's or Client's employees' record keeper. Paycor's maintenance of any records is only for the provision of the Services and is not a substitute for Client's own records or compliance with its record retention obligations. Paycor archives various reports it generates, and any documents or information provided by Client in any form only as a convenience to Client.

## **2. PAYROLL FUNDING**

**2.1 Funding Obligations.** Client's payment obligations must be funded using Client's demand deposit account ("DDA"). Client agrees to maintain sufficient good funds available in its DDA to cover all of Client's payment obligations, including, but not limited to, payroll obligations, tax filing obligations and any Fees (as defined below) and expenses incurred hereunder. Paycor may debit Client's DDA to collect all of Client's payment obligations, as authorized by Client via a bank authorization form. Client requests for refunds or adjustments will not be processed until Paycor verifies that sufficient funds were received by Paycor to cover all of Client's payment obligations. For payroll, tax, and garnishment services, sufficient good funds must be available in Client's authorized DDA at the time of payroll processing and should remain in the account until Paycor debits the funds from Client's DDA as contemplated herein. In the event of any failure by the Client to timely fund any obligation, Paycor reserves the right to modify any funding deadline at any time by providing notice to Client.

**2.2 Wire Transfer.** Paycor may, in its sole discretion, require wire transfers in lieu of Paycor initiating an Automated Clearing House debit against Client's DDA. If required by Paycor, Client agrees that funds representing Client's total payment obligations will be transferred (via direct wire transfer or reverse wire transfer) from the Client's DDA to Paycor's account at least one (1) banking day prior to the pay date/check date for the applicable payroll prior to disbursing any funds to any third party. Client agrees to pay Paycor a wire transfer fee for each wire transfer.

**2.3 Insufficient or Returned Funds.** If Client fails to maintain sufficient funds in its DDA to cover its payment obligations under this Agreement or when an attempt for Paycor to collect Client's payment obligations under this Agreement is returned for any other reason (collectively, a "Return Event"), Paycor may deem Client to be in breach of this Agreement and may assess an insufficient funds charge. Upon any Return Event, Paycor will use commercially reasonable efforts to notify Client of the Return Event and provide Client with an opportunity to timely cure the Return Event. Paycor shall not be obligated for any of Client's tax deposits and filings, employee wages, or wage garnishments or any related penalties and interest that result from a Return Event. In addition to any other remedies provided in this Agreement or otherwise available to Paycor by law, Paycor may require Client to issue corporate checks to its employees in lieu of Paycor suspending or terminating any Services. Any request by Client for Paycor to reissue an electronic funds transfer ("EFT") transaction may be subject to additional fees. In any event, Client shall be liable for all debits initiated by Paycor pursuant to this Agreement. Client shall pay Paycor the amount of any unfunded payment obligations (including any debit which is returned to Paycor because of insufficient or uncollected funds or for any other reason) upon demand, together with interest as set forth below. Client shall be responsible for any unsuccessful request for a reversal or correction to a previously submitted credit to an employee or other payee's account. Client acknowledges that the funds may not be returned to Client by Paycor unless Paycor has confirmed receipt of a successful credit from such employee or payee. Client shall cooperate with Paycor, and any other parties involved in processing any transactions to recover funds credited to any employee because of an error made by Paycor or another party processing a transaction on behalf of Paycor.

**2.4 NACHA Compliance.** Client agrees to comply with all National Automated Clearing House Association and Office of Foreign Asset Control provisions, as set forth in the bank authorization(s) executed by Client.

**2.5 Supplemental Agreements.** Client shall execute any other documents needed for Paycor to provide Services including, without limitation, a bank authorization form, and any documentation requested by any federal, state, or local governmental agency or taxing authority to evidence the appointment of Paycor as Client's Reporting Agent (each a "Supplemental Agreement") in the form deemed necessary by Paycor.

## **3. FEES AND PAYMENTS**

**3.1 Fees.** Client will pay Paycor all monthly and/or annual recurring fees, implementation or one-time fees, Miscellaneous Fees (as defined below), or fees for consulting services (collectively, "Fees") and other charges related to the Services, provided that Paycor may invoice Client at any time for actual Services consumed or utilized. "Miscellaneous Fees" mean any minimum fees and additional fees for services not enumerated in an Order, which may be adjusted at any time without notice. For a full listing of current Miscellaneous Fees, see <https://www.paycor.com/miscellaneousfees>. Certain Services may be subject to a minimum employee count or minimum fee requirement. If Client does not meet the minimum requirement for the applicable Services, Paycor may assess a minimum fee for such monthly period. All Fees are non-refundable. Paycor has the right to change the Fees and any other charges contemplated under this Agreement from time-to-time upon no less than thirty (30) days' prior notice to Client and Client's continued use of the Services constitutes Client's agreement to any such change. Unless otherwise stated herein or agreed to in writing, Client authorizes Paycor to and Paycor shall debit Client's DDA for the Fees and all other charges. Client has fifteen (15) days from the date of a debit or the date of an invoice, whichever is later, to dispute any charges or withdrawals. Any claims not disputed in such timeframe are waived.

**3.2 Taxes.** Fees are exclusive of all taxes, including without limitation, sales, use, value-added or other taxes or levies on transactions made under this Agreement. Client shall pay an amount equal to any tax Paycor is required to collect or pay upon the sale, license, or delivery of Services to Client by Paycor exclusive of taxes imposed upon Paycor's net income. Client authorizes Paycor to debit the applicable taxes from Client's DDA, unless Client provides Paycor with a valid tax exemption certificate authorized by the appropriate taxing authority.

**3.3 Investment of Client Funds.** Client acknowledges that Paycor may invest Client's funds as Paycor deems appropriate. Any and all profits, accumulations and any other gains resulting from such investments shall accrue for the benefit of and shall be the sole property of Paycor, and Client hereby assigns to Paycor all benefits derived from Client funds held by Paycor. Paycor shall be solely responsible for any and all losses incurred due to Paycor's investment of Client's funds.

**3.4 Late Payment.** If Client fails to timely remit payment in full for any amount due to Paycor (including failure to pay Fees or unfunded payroll and tax filing obligations), Paycor shall have the right to: (i) assess a late payment charge on any overdue amounts equal to the lesser of: (x) one and one-half percent (1.5%) per month; or (y) the highest rate allowed by applicable law; (ii) be entitled to collect reasonable attorneys' fees and other costs incurred by Paycor if Paycor initiates actions to collect any unpaid amounts from Client; and (iii) offset such amount of fees due, including collection fees and attorneys' fees, against any Client funds held by Paycor. At Paycor's sole discretion, Paycor may offer Client a one-time option to pay Fees (not payroll or tax liabilities) via credit card. If Client elects to make the payment of any Fees via credit card payment, Client agrees to be responsible for any associated convenience fee of the invoiced amount and any related late fees and interest charges.

#### **4. CONFIDENTIALITY AND CLIENT INFORMATION**

**4.1 Definition.** "Confidential Information" means any information disclosed by one party to the other, in any form or medium, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information or the circumstances of disclosure. Confidential Information of each party includes this Agreement and all Orders (including pricing), any technology and technical information, product plans and designs, and business processes disclosed by a party. Confidential Information does not include information that (i) is or becomes generally known to the public without breach of any obligation of this Agreement, (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation of this Agreement, (iii) is received from a third party without breach of any obligation of this Agreement, or (iv) was independently developed by the receiving party.

**4.2 Protection of Confidential Information.** Each party shall protect the Confidential Information of the other party with at least the same degree of care, but in any event not less than a reasonable standard of care, which such party utilizes for its own information of similar character. Receiving party shall use Confidential Information solely for purposes of its performance under this Agreement and otherwise as expressly set forth herein, and may disclose such information to its employees, affiliates, subsidiaries, professional advisors and agents only on a need-to-know basis, provided that such persons are bound by obligations of confidentiality at least as restrictive as those set forth in this Agreement. Paycor may further disclose Client's Confidential Information to third-party partners, vendors, contractors and other third parties as directed by Client in connection with certain of the Services or as otherwise necessary to perform the Services. Either party may disclose Confidential Information as required by court order or otherwise by law, if it gives the other party written notice in advance of such disclosure sufficient to permit the other party to seek a protective order and, if so ordered, discloses only the minimum Confidential Information necessary to comply with the order. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party in its possession. Notwithstanding the foregoing, the receiving party may retain a copy of Confidential Information if required to meet its legal or regulatory obligations; provided that any copies retained for record management purposes shall remain subject to the restrictions and protections set forth herein for so long as they are retained. The obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of the Agreement for whatever reason. If a party commits or threatens to commit, a breach of this Section, the other party shall have the right to seek injunctive relief from any court of competent jurisdiction.

#### **5. PAYCOR INTELLECTUAL PROPERTY**

**5.1 Intellectual Property.** Paycor and/or its affiliates are the exclusive owners of all copyright, patent, trade secret, trademark and other intellectual property and proprietary rights related thereto ("IP") in and to the Services, Documentation, and Paycor affiliates' services and documentation, and, except as expressly stated herein, Client shall have no right, title, or interest in the Services, Documentation, or Paycor affiliates' services and documentation. Paycor and/or its affiliates shall also be the exclusive owners of all right, title and interest, including all IP rights, in and to (i) any and all translations, adaptations, developments, enhancements, improvements, Upgrades, versions, customizations or other modifications or derivations of or to the Services (or Paycor affiliates' services), whether or not developed by or for the Client, and (ii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Client relating to the Services (or Paycor affiliates' services). If Client is ever held or deemed to be the owner of any intellectual property rights covered by this Agreement or any changes, modifications, or corrections to the Services or Paycor affiliates' services, Client hereby irrevocably assigns to Services or the respective Paycor affiliate, all such rights, title, and interest. Client agrees to execute all documents necessary or appropriate to implement and confirm the letter and intent of this section.

**5.2 Paycor Related Marks.** Paycor and/or its affiliates' names, logos, trademarks, and other identifiable marks (collectively "Paycor Related Marks"), are the exclusive property of Paycor and/or its affiliates. Client shall not remove or alter any Paycor Related Marks, including proprietary rights notices, in connection with the Services or Documentation, or its affiliates' services or documentation. Client shall not use any Paycor Related Marks in any advertising, publicity, communications, or in any other manner without the express written consent of Paycor and/or its affiliates.

#### **6. TERMINATION**

**6.1 Term.** This Agreement is effective as of the Effective Date and will remain in effect until terminated in accordance with this Agreement.

**6.2 Termination for Convenience.** Unless otherwise provided in this Agreement, either party may terminate all or part of the Services under this Agreement at any time by providing sixty (60) days advance written notice to the other party. Client shall submit notice under this provision in accordance with the directions located in <https://support.paycor.com/s/article/Paycor-Account-Closure-Form-A-Customer-s-Guide>. If Client terminates any individual Service or all Services, Client shall pay any Fees through the termination effective date. Fees will not be prorated in the event of such termination and may be invoiced at the end of the month in which the termination is effective. Pricing is determined based on anticipated volume and if Client terminates or fails to initiate a purchased Service, Paycor may re-price the Service in accordance with Paycor's then-current standard pricing.

**6.3 Termination for Cause.** Either party may terminate this Agreement upon thirty (30) days prior written notice, if the other party materially fails to comply with any provision of this Agreement and such failure is not cured by the end of such thirty (30) day period. The cure period will not apply in the case of Client's failure to properly fund accounts.

**6.4 Immediate Suspension and Termination of Services.** Notwithstanding and in addition to any other provision of this Agreement, Paycor may immediately suspend Client's or any User's access to and use of the Services or immediately terminate this Agreement in the event that: (i) Client is deemed by Paycor to be in breach of the Client Obligations section of this Agreement; (ii) Client or a Client's employee is suspected of committing or commits an unlawful activity that would reasonably impact the rights and obligations of either Party under this Agreement; (iii) in the event of any security risk or negative impact on infrastructure; (iv) Client fails to maintain sufficient funds in its DDA or if a Return Event occurs; (v) Client fails to pay any Fees as they become due; (vi) Client fails Paycor's due diligence analysis; (vii) Client asserts, files or threatens adverse action against Paycor; or (viii) if the

nature of Client's business activities are prohibited by Paycor's depository institutions. Paycor shall endeavor to provide notice to Client in the event of any such suspension or termination to the extent it is commercially reasonable. In addition to and not in limitation of any of Paycor's remedies, Paycor may take any actions it deems appropriate to secure payment of all amounts owed to Paycor by Client under this Agreement and including the right to offset for any amounts owed by Client to Paycor in any Paycor account. Client agrees to pay for all collection costs, including reasonable attorneys' fees, which Paycor may incur as a result of Client's failure to perform any obligation under this Agreement.

**6.5 Effect of Termination.** Upon the effective date of termination or expiration of any Order or this Agreement, Client's access to and use of the Service(s) shall cease, and Client remains responsible for all payment obligations, Fees for Services, and costs due under this Agreement. Upon termination of this Agreement, (i) Paycor shall not be responsible for making any further payroll tax deposits or filings, (ii) Client will remit any and all tax and third-party payments beginning with the date of termination; and (iii) Paycor may retain deposits to offset any amounts owed from Client and will, within thirty (30) days of the date of termination, return to Client any uncommitted Client funds held in any Paycor account less any payment obligations and undisputed Fees due to Paycor for Services performed through the date of termination. Except to the extent that Client is in breach or default of any obligations under the Agreement, including outstanding payment obligations, Paycor may, upon Client's request and receipt of sufficient information from Client in a manner reasonably requested by Paycor, prepare and file any outstanding employment tax forms and reports, prepare employee W2s, and perform other reasonable and customary actions related to the terminated Services, provided that Client has paid for such Services.

**6.6 Data Access Upon Termination.** At any time prior to the actual termination date, Client may download Client's information or reports which are made available in conjunction with the Services. If this Agreement is terminated for any reason other than Client's breach or default hereunder, Client shall, for up to sixty (60) days following the effective termination date, be provided with access to online and custom payroll and tax reporting as previously subscribed to by Client, for the sole purpose of obtaining an electronic copy of Client Data. All other access to the Services shall terminate upon effective date of termination. Paycor is not responsible for Client's failure to obtain an electronic copy of its data within such sixty (60) day period, and Client acknowledges that Paycor has no liability for any claims related thereto. Client acknowledges and agrees that Paycor shall have no obligation to provide Client with access to the Services or the online and custom payroll and tax reporting as previously subscribed to by Client: (i) in the event Client is in breach or default hereunder, or (ii) beyond the sixty (60) day period referenced herein. Paycor may, upon request from Client following termination, provide Client with its data and any standard reporting as it exists in Paycor's system. Paycor shall have the right to charge Client reasonable fees for providing such data based upon Paycor's then applicable rates for professional services.

## **7. WARRANTIES, INDEMNIFICATION, AND LIMITATION OF LIABILITY**

### **7.1 Limited Warranties and Disclaimers.**

**A. Paycor.** Paycor warrants to Client that: (i) it has the authority to execute this Agreement and it is binding and enforceable; and (ii) the Services will perform substantially in accordance with the Documentation when used as authorized herein (provided, however, the warranty in (ii) shall not apply to any new features or services made available in pilot, preview, or evaluation form. No breach of warranties in this Section shall occur to the extent arising from: (a) Client operator errors; (b) Client hardware or operating system failures; (c) the modification of the Services by any person other than Paycor (except as directed or authorized by Paycor); (d) the combination of the Services with products or services not provided by Paycor (except as directed or authorized by Paycor); (e) use of any portion of the Services in a manner not permitted or contemplated by this Agreement or the Documentation; or (f) use of an earlier version of the Services, or use of the Services without all then-current Upgrades if so directed by Paycor.

**B. Client.** Client represents and warrants that: (i) it has the authority to execute this Agreement and it is binding and enforceable; (ii) Client will comply with all laws applicable to its use of the Services; (iii) it has all rights, title, and interest in and to Client Data, including the right to transmit all Client Data to Paycor in accordance with this Agreement; and (iv) the Client Data as provided to Paycor, via upload or otherwise, will not infringe or misappropriate any third party intellectual property rights.

**C. DISCLAIMERS OF WARRANTIES.** EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL SERVICES PROVIDED BY PAYCOR ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND PAYCOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OF RESULTS, NON-INTERRUPTION OF USE, AND FREEDOM FROM ERRORS, VIRUSES OR OTHER MALICIOUS CODE, WITH RESPECT TO THE SERVICES OR ANY THIRD-PARTY SOFTWARE DELIVERED BY PAYCOR. CLIENT ACKNOWLEDGES THAT PAYCOR, ITS EMPLOYEES AND REPRESENTATIVES (I) ARE NOT ENGAGED IN RENDERING LEGAL, TAX, BENEFIT, ACCOUNTING, INVESTMENT OR OTHER PROFESSIONAL OR EXPERT ADVICE OR SERVICES, (II) ARE NOT RESPONSIBLE FOR HOW THE SERVICES ARE USED BY CLIENT, THE RESULTS AND ANALYSIS DERIVED BY CLIENT FROM THE SERVICES, OR ANY DECISIONS CLIENT MAY MAKE BASED ON CLIENT'S USE OF THE SERVICES; AND (III) SHALL NOT BE DEEMED TO BE, A FIDUCIARY OF CLIENT FOR ANY PURPOSE.

### **7.2 Indemnification.**

**A. Paycor.** Paycor will defend, indemnify, and hold Client harmless against losses, damages, costs, and expenses (including reasonable attorneys' fees) to the extent resulting from or related to any third-party claim ("Claim") that Client's authorized use of the Services infringes on such third party's U.S. intellectual property rights. This indemnity does not cover claims to the extent arising from Client's use of the Services in a manner inconsistent with the Documentation, or any violation of this Agreement. If, in Paycor's opinion, the Services are the subject of a third-party claim of infringement, Paycor may, at its sole option and expense, (i) obtain a license for Client's continued use of the Services; (ii) replace the applicable Service with non-infringing equivalent functionally; or (iii) modify the Services such that it is non-infringing without material degradation.

**B. Client.** Client will indemnify, defend, and hold harmless Paycor, along with its affiliates and their respective officers, directors and employees from and against any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) to the extent arising from or related to any Claim pertaining to: (i) Client's or User's failure to perform the obligations in Section 1; (ii) Paycor's use of or reliance on any Client Data, including any violation of a third-party's intellectual property rights with respect to Client Data provided under this Agreement; (iii) any third party's access to and use of the Services (or access and use of any Third-Party services via the Services) with Client's or User's unique credentials; (iv) Client's or User's use or misuse of the Services; (v) Client's or User's violation of laws or regulations applicable to its use of the Services; (vi) acts or omissions of Paycor pursuant to instructions provided by or on behalf of Client; and (vii) Client's failure to fund any payment obligation, any debit or any reversal of payments previously made to Client's personnel or others as a result of Client's failure to fund or pay its obligation.

**C. Indemnification Procedures.** The indemnitor's obligations are conditioned on the indemnitee: (i) promptly giving written notice of the Claim to the indemnitor (although delay of notice will not relieve the indemnitor of its obligations except to the extent that the indemnitor is prejudiced by such delay);

(ii) giving sole control to the indemnitor of the defense and settlement of the Claim; and, (iii) fully cooperating, at the indemnitor's request and expense, with the indemnitor in the defense or settlement of such Claim. The indemnitor may not, without the prior written consent of the indemnitee (which shall not be unreasonably withheld, conditioned, or delayed), settle any Claim that negatively affects indemnitee in an ongoing manner.

### **7.3 Limitation of Liability.**

**A. Indirect Damages Limitation.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, SPECIAL, OR OTHER INDIRECT DAMAGES OF ANY SORT (INCLUDING LOST PROFITS, LOST REVENUE, LOSS OF ACTUAL OR ANTICIPATED BUSINESS, BUSINESS INTERRUPTION, OR SERVICE DELAYS OR INTERRUPTIONS) AS A RESULT OF THE PERFORMANCE OR NON-PERFORMANCE OF ANY OBLIGATION UNDER THIS AGREEMENT, EVEN IF IT HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR THE NATURE OF CLAIM.

**B. Direct Damage Limitation.** NEITHER PARTY WILL BE LIABLE FOR ANY ACTIONS, FACTS OR CIRCUMSTANCES OCCURRING OR EXISTING PRIOR TO THE DATE OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, PAYCOR AND ITS AFFILIATE'S AGGREGATE LIABILITY RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL NOT EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CLIENT UNDER THIS AGREEMENT DURING THE IMMEDIATELY PRECEDING SIX (6) MONTH PERIOD FOR THE SERVICES FROM WHICH THE CLAIM AROSE.

**C. EXCLUSIONS.** THE LIMITATIONS OF LIABILITY SET FORTH IN 7.3.B ABOVE WILL NOT APPLY TO LIABILITY FOR: (I) INTEREST CHARGES AND PENALTIES IMPOSED BY TAXING AUTHORITIES TO THE EXTENT PROVEN TO BE THE DIRECT RESULT OF PAYCOR'S NEGLIGENCE; (II) DAMAGES DIRECTLY CAUSED BY PAYCOR'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD; AND (III) PAYCOR'S INDEMNIFICATION OBLIGATIONS HEREUNDER.

## **8. GENERAL PROVISIONS**

**8.1 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Neither party has the right to bind the other party to any agreements.

**8.2 Assignment.** This Agreement may not be assigned by Client without prior written consent of Paycor, and any assignment made without such consent is null and void.

**8.3 Dispute Resolution; Governing Law and Venue.** In the event of any dispute arising in connection with this Agreement the parties agree to appoint senior leaders to meet in good faith to attempt to resolve any such dispute within sixty (60) days from the date of request at a location to be designated by Paycor (teleconference preferred). This Agreement shall be construed in accordance with and governed by the laws of the State of Ohio (without regard to principles of conflict of laws), including the application of any applicable statutes of limitations. Any action, suit or proceeding brought by any party with respect thereto shall be brought by such party exclusively in the courts of the State of Ohio located in Hamilton County, Ohio, or in the courts of the United States for the Southern District of Ohio, Western Division. It is further agreed that all claims and disputes may only be contested and resolved on an individual basis and not on a class or collective basis. Client acknowledges and agrees that only individual relief is available and that no claims may be consolidated with those of any other party.

**8.4 Waiver of Jury Trial.** EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF THIS AGREEMENT.

**8.5 Severability.** If any provision is found to be illegal, invalid, or otherwise unenforceable by any judicial or administrative body, the other provisions will not be affected and will remain in full force and effect.

**8.6 Non-Hire.** During the term of this Agreement, Client shall not solicit the employment of any Paycor personnel who have been involved in providing Services; provided, nothing will prohibit Client from hiring any Paycor personnel who responds directly to a general solicitation of employment, provided Client did not initiate contact directly or otherwise notify Paycor's personnel of the solicitation.

**8.7 No Third-Party Beneficiary.** This Agreement is made solely for the benefit of Paycor and Client and no other person shall be a third-party beneficiary of any provision under this Agreement.

**8.8 Survival.** Those Sections which by their nature should logically survive termination of this Agreement shall so survive any termination or expiration.

**8.9 Force Majeure.** Except for Client's payment obligations, neither party will be liable for any failure or delay in performing its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, natural catastrophes, acts of war, terrorism or civil disobedience, governmental acts, embargoes, labor strikes or difficulties, failures of third party suppliers, acts or omissions of carriers, transmitters, vandals, transportation stoppages or slowdowns or the inability to procure parts or materials. Each party will use reasonable efforts to give written notice to the other promptly after becoming aware of any condition or event causing any such excusable performance failure or delay.

**8.10. Order of Precedence.** In the event of any conflict between the terms this Agreement and any Order or other attachment, the order of precedence shall be as follows: first, this Agreement; then, any applicable schedules or exhibits to this Agreement; then, any Order or SOW; then any addenda or other attachments to any Order.

**8.11 Entire Agreement; Amendment.** This Agreement constitute the entire agreement between the parties and supersede all prior agreements, understandings, proposals, and communications, oral or written, relating to the subject matter of this Agreement. Any purchase order, request for proposal or other document prepared, issued, or provided by or on behalf of Client (including terms or certifications required by any Client vendor management system) relating to the subject matter of or in connection with, this Agreement will be of no effect, even if acknowledged by Paycor. This Agreement may be amended from time-to-time to Paycor in its discretion; provided Paycor shall provide at least thirty (30) days' prior notice of the effective date of any material amendment(s). Notwithstanding the foregoing, Client's continued use of the Services after the effective date will serve as Client's consent to the same.