

PAYMENT EXPRESS END USER LICENSE AGREEMENT (EULA)

This Payment Express End User License Agreement (this "**Agreement**") is made as of the date you begin using Payment Express Goods or Software ("**Effective Date**"), and is by and between PAYMENT EXPRESS INC. ("**PX**") and you, the party using the Goods or Software to process Transactions ("**Customer**").

1. Definitions and Interpretation

1.1 Definitions: In this Agreement, unless the context indicates otherwise:

Acquirer means a bank or any financial institution or a card issuer of financial or non-financial transactions which receives and transmits Transactions via Payment Express;

Agreement means this Agreement, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

Business Day means any day of the week except Saturday, Sunday or a day on which banks are authorized or required to be closed in California;

Chargeback means the procedure by which a sales record or other indicia of a card transaction (or disputed portion thereof) is denied or returned to Acquirer or the card issuer after it was entered into the appropriate settlement network for payment, in accordance with the rules of Visa, MasterCard or a similar card association ("**Rules**"), for failing to comply with the Rules, including, without limitation by reason of cardholder disputes, the liability for which is Customer's responsibility and Customer agrees to pay.

Confidential Information means, in relation to either party, any information:

- (a) relating to the terms of this Agreement;
- (b) relating directly or indirectly to research or development by, accounting for, or the marketing of, the business of that party or its suppliers or customers;
- (c) disclosed by that party to the other party on the express basis that such information is confidential; or
- (b) which might reasonably be expected by the other party to be confidential in nature;

Customer means the customer specified on the first page of this Agreement and where applicable includes its employees, contractors and agents.

Documentation means any user, training or system manuals for Payment Express (whether in printed or electronic form) which describes and provides guidance on the use of Payment Express (or any aspect of Payment Express);

Goods means electronic devices produced by PX or sold by PX to Customer, Reseller, or a third party;

Intellectual Property means registered and unregistered trade marks (including logos and trade files), domain names, copyright, patents, petty patents, utility models, registered and unregistered designs, circuit layouts, rights in computer software, databases and lists, Confidential Information, software (whether in object code or source code), and all other rights anywhere in the world resulting from intellectual activity;

Payment Express means the Payment Express solution provided by PX for the transmission of data relating to Payment Express Supported Transactions between a Customer and an Acquirer, incorporating the Software and including access (via the internet) to the Payment Express Host;

Payment Express Host means the PX host server known as Payment Express Host to which Customer may be connected using the Software and which is in turn linked to an Acquirer to enable Payment Express Supported Transactions to be processed in real time;

Payment Express Supported Transactions means transactions from Customers:

- (a) accepting payment for goods and services by means of credit card, debit card, prepaid card, gift card or any other means of payment which PX agrees to support through Payment Express from time to time;
- (b) accepting loyalty cards, rewards cards, points cards, discount cards or club cards; or
- (c) providing services in relation to the sale and use of any of the cards referred to in paragraphs (a) and (b) above including the issue of such cards and the crediting or debiting of value to such cards;

Payment Manager means Payment Express Merchant Portal which Customer is able to access by logging onto the PX Website with an assigned username and password;

PCI Standards means the Payment Card Industry standards, requirements and guidelines issued by the Payment Card Industry Data Security Council from time to time including the Payment Card Industry Data Security Standard PIN Entry Device requirements and guidelines, and the Payment Application Data Security Standard;

Permitted Use means the transmission to, and receipt from, an Acquirer of data relating to Payment Express Supported Transactions and expressly excludes, without limitation, use for the processing of transactions of, or for the benefit of, any person other than Customer;

Reseller means the party with whom Customer has entered into an agreement for the purchase of a license to Payment Express;

Reseller Agreement means the agreement between the Customer and the Reseller;

PX means Payment Express Inc., a corporation duly formed in California with offices in Los Angeles, California.

PX Logo means the PX logo supplied (in electronic format) by PX to Customer (as may be updated from time to time by PX);

PX Website means the website maintained by PX and accessible by Customer for viewing transactions, data entry, refunding, report generating and other features related to Transactions;

Software means the software and other related PX products which:

- (a) form part of Payment Express; and
- (b) is owned or licensed by or developed by, or on behalf of, PX and supplied to Customer, including all upgrades, updates, alterations and modifications and other changes to such software by or on behalf of PX from time to time, but excluding any third party software and firmware forming part of, or supplied with, the Payment Express solution;

Transaction means a message pair consisting of a message relating to a Payment Express Supported Transaction transmitted by Customer to an Acquirer through Payment Express and a response to that message from the Acquirer to Customer through Payment Express;

Tokenized Data means data for which PX has substituted a sensitive data element with a non-sensitive equivalent that has no extrinsic or exploitable meaning or value.

1.2 Interpretation: In this Agreement, unless the context indicates otherwise:

- (a) the singular includes the plural and vice versa;
- (b) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (c) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
- (d) references to a **person** include an individual, company, corporation, partnership, firm, joint venture, association, trust, unincorporated body of persons, governmental or other regulatory body, authority or entity, in each case whether or not having a separate legal identity;
- (e) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (f) in the event of any inconsistency between the terms this Agreement and the terms of the Reseller Agreement, the terms of this Agreement will control.

2. Term

2.1 Term: This Agreement commences on the Effective Date and will continue until terminated under Clause 9 (the "**Term**").

3. Customer Responsibilities

Customer represents and agrees that it:

3.1 Power and Authority: that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement

- 3.2 Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice
- 3.3 Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of Payment Express for its purposes;
- 3.4 Comply with Instructions:** will comply with PX's restrictions, instructions and Documentation in relation to the use of Payment Express, including those set out in this Agreement;
- 3.5 Use by Others:** will ensure that only authorized persons use Payment Express and that Payment Express is used only for the Permitted Use and as expressly authorized under this Agreement;
- 3.6 Responsibility for Use:** will accept all responsibility for the reliance on and use of Payment Express by Customer and its employees, contractors and agents;
- 3.7 Obtain Equipment etc:** will obtain and maintain all equipment, software and services needed to enable it to receive and use Payment Express;
- 3.8 Accurate Customer Information:** warrants that all information provided by Customer to PX in the Application Form is accurate and correct, and that Customer will notify PX in writing if such information changes or ceases to be accurate in any way;
- 3.9 Provide Sufficient Information:** will ensure that sufficient information is given to PX to enable PX to comply with its obligations under this Agreement and that such information is timely, complete and accurate;
- 3.10 Personal Information:** acknowledges that any personal information concerning Customer or its personnel which is provided to PX by or on behalf of Customer may be:
- used by PX for the purpose of providing Payment Express, the Support Services and any other services to Customer; and
 - disclosed by PX to its affiliates and other services providers to enable PX to provide Payment Express, the Support Services and any other services to Customer;
- 3.11 Notify of Third Party Infringement:** will immediately notify PX upon becoming aware of any third party infringing PX's Intellectual Property rights in any manner;
- 3.12 Responsible for Connecting to Payment Express Host:** is responsible for all charges and costs associated with connecting to the Payment Express Host to operate Payment Express. PX will provide Customer with reasonable technical information and Software necessary to enable Customer to connect to the Payment Express Host; and
- 3.13 Comply with Law Generally:** will comply with all relevant laws in its use of Payment Express and carrying out its obligations under this Agreement.
- 3.14 Requisite Review of Payline Portal:** will review Customer's payline portal, established by PX, with due care on a daily basis for transaction errors. If an error is discovered by Customer, Customer will notify PX in writing within three (3) Business Days of the date such error occurs; provided that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) Business Day period. In addition, Customer shall be required to review with due care its bank settlement files on a daily basis to ensure deposits occur without error. If an error is discovered by Customer in the course of such review, Customer will notify PX in writing within three (3) Business Days of the date of such error occurring; provided that PX will have no liability or obligations of any kind with respect to errors that are not reported to PX within such three (3) Business Day period. PX's liability under this Section 3.14 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 9 of this Agreement.
- 3.15 Improperly Deposited Funds:** will return funds that PX deposits in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds") without offset or delay. Customer will return all Improperly Deposited Funds to PX within five (5) calendar days of a written request to do so by PX. If Customer fails to comply with the terms of this Section, PX may immediately suspend services to Customer until Customer returns the Improperly Deposited Funds. Customer will be liable to PX for the Improperly Deposited Funds, and

all costs (including legal costs on an attorney-client basis) incurred by PX in recovering the Improperly Deposited Funds.

- 3.16 Return of Old Goods:** For Goods that Customer ceases using for the Permitted Use ("Unused Goods"), Customer will return such Unused Goods to PX within 30 calendar days. Unused Goods include, but are not limited to, Goods Customer has ceased using due to the Goods becoming obsolete, Goods that no longer operate, and Goods that are replaced per warranty. Customer will pay all shipping fees and costs associated with returning the Unused Goods to PX. Alternatively, instead of returning Unused Goods to PX, Customer may provide PX a secure destruction certificate evidencing that the Unused Goods were destroyed in compliance with the Security Standards within the same 30 calendar day period.

4. Disclaimer of Warranties

- 4.1 Limitations on Warranties:** To the fullest extent permitted by law, except as expressly set out in this Agreement, PX disclaims and excludes all warranties, conditions, terms, representations or undertakings, whether express, implied, statutory or otherwise, including any condition or warranty of merchantability or fitness for a particular purpose. PX does not warrant that:

- Payment Express, the Software or the Documentation will meet Customer's requirements; or
- Payment Express, the Software and the Documentation will be uninterrupted or error free, or that all errors will be corrected.

Customer understands and acknowledges that an authorization obtained through Payment Express only confirms the availability of the cardholder's credit at the time of the authorization. It does not warrant that the person presenting the card is the rightful cardholder, nor is it an unconditional promise, guarantee or representation by Acquirer, processor or PX that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback.

- 4.2 No Requirement to Decrypt Tokenized Data:** PX will at no time be obligated to decrypt and transmit Tokenized Data to Customer or any third party.

5. Intellectual Property

All Intellectual Property rights in Payment Express, the Software, the Documentation and any work or thing developed or created by or on behalf of PX under or in connection with this Agreement (such work or thing being **Developed Works**), are exclusively owned by PX (or PX's licensors or suppliers). Customer acknowledges that there is no transfer of title, Intellectual Property rights or ownership of:

- Payment Express, the Software, the Documentation or any part thereof; or
- any Developed Works; to Customer under this Agreement and Customer will not dispute PX's (or PX's licensors or suppliers) ownership of the property referred to in this clause 5.

6. Indemnity

Customer shall indemnify PX (and at PX's sole discretion, defend PX) at all times against any liability, loss, damage or cost (including attorney's fees) suffered or incurred by PX and all actions, proceedings, claims or demands made against PX as a result of any negligent act or omission or any breach of this Agreement by Customer, its personnel or agents.

7. Liability

- 7.1 Remedy:** Subject to clauses 7.2 and 7.3, Customer's sole and exclusive remedy for breach of any warranty or of any of PX's obligations under this Agreement is (at PX's option) the supply or re-supply of Payment Express, the Goods, the Software, or the Documentation or the refund or waiver of Fees for the relevant part of Payment Express the Goods, the Software, or the Documentation which is the subject matter of, or directly related to, the breach.

- 7.2 Limitation:** In no event will PX's total liability to Customer under this Agreement for any reason exceed the amount of \$1,000.

- 7.3 Exclusion:** In no event will PX be liable to Customer whether in contract, tort (including negligence) or otherwise in respect of any:

- punitive, incidental, indirect or consequential damages, damages for loss of profits, business interruption, loss of data, loss of goodwill, arising out of, or in connection with,

this Agreement, in each case even if such party has been advised of the possibility of such damages;

- (b) loss, damage, cost or expense suffered or incurred by Customer, to the extent this results from any act or omission by Customer; or any event described in Part B, clause 14 (Force Majeure).

8. Commercial Purpose

It is expressly acknowledged and agreed by Customer that Payment Express, the Software and the Documentation are supplied to Customer for business and commercial purposes.

9. Termination

9.1 PX Termination Upon Notice: PX may terminate this Agreement without liability or obligation to Customer of any kind upon written notice to Customer if the Reseller Agreement expires or is terminated by Customer and/or Reseller for any reason.

9.2 PX Termination for Cause: PX may terminate this Agreement without liability or obligation to Customer of any kind at any time and with immediate effect by written notice to Customer:

- (a) if Customer breaches any of its obligations under this Agreement; or
(b) if Customer fails to pay any amounts due to Reseller pursuant to the Reseller Agreement; or
(c) goes into voluntary or involuntary bankruptcy or liquidation or has a receiver appointed.

9.3 Customer Termination: Customer may terminate this Agreement if PX breaches any of its obligations under this Agreement and fails to cure such breach within 10 Business Days after receipt of written notice of such breach.

9.4 Consequences: Termination of this Agreement will not affect the rights or obligations of the parties which have accrued prior to or accrue on termination or which by their nature are intended to survive termination (including clauses 3-7, 10, 13, and 14, together with those clauses which are incidental to, and required in order to give effect to, those clauses). Upon termination of this Agreement, Customer must immediately cease use of Payment Express, the Software and the Documentation.

10. Confidentiality

10.1 Confidential Information: Each party will maintain as confidential at all times, and will not at any time, directly or indirectly:

- (a) disclose or permit to be disclosed to any person;
(b) use for itself or to the detriment of the other party; any Confidential Information of the other party except as, and then only to the extent:
(i) required by law;
(ii) that the information is already or becomes public knowledge, otherwise than as a result of a breach, by the receiving party, of any provision of this Agreement;
(iii) that the information is disclosed to the receiving party, without restriction, by a third party and without any breach of confidentiality by the third party;
(iv) that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
(v) authorized in writing by the other party; or
(vi) reasonably required by this Agreement (and, without limiting the effect of this clause, a party may disclose Confidential Information of the other party only to those of its officers, employees or professional advisers on a "need to know" basis, as is reasonably required for the implementation of this Agreement).

10.2 PX's Intellectual Property: Customer acknowledges and agrees that the computer programs, computer software, specifications, databases, images, designs, codes, and configurations contained in or utilized by the equipment and PX's network are proprietary and confidential to PX and protected under United States copyright law. Customer shall not copy, modify, adopt, translate, merge, reverse engineer, decompile, or disassemble, the equipment or Software, or create any derivative works based on the equipment, PX network or Software. Without limiting the effect of clause 10.1, Customer will

treat information about PX's Intellectual Property as Confidential Information of PX.

11. Force Majeure

11.1 Customer acknowledges that PX relies on third-party providers in the delivery of its services, including, but not limited to, wireless data network providers, cellular radio service provided by third parties that is available only when within the operating range of cellular systems, and cellular service is subject to transmissions limitations and dropped or interrupted transmissions. Cellular service may be temporarily refused, limited, interrupted, or curtailed because of government regulations or orders, atmospheric and/or topographical conditions, and cellular system modifications, repairs, and upgrades. Customer agrees that PX shall not be liable for, and to hold PX harmless for any losses, damages, or business interruptions sustained as a result of interruptions caused by its wireless data network providers or any other third-party provider.

11.2 Neither party (the "Affected Party") shall be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by
(a) fire, flood, elements of nature or other acts of God;
(b) any outbreak or escalation of hostilities, war, riots or civil disorders in any country;
(c) any act or omission of the other party or any government authority;
(d) any labor disputes (whether or not employees' demands are reasonable or within the party's power to satisfy); or
(e) the nonperformance by a third party for any similar cause beyond the reasonable control of such party, including without limitation, failures or fluctuations in telecommunications or other equipment such as described in clause 11.1.

11.3 In any such event, the Affected Party shall be excused from any further performance and observance of the obligations so affected only for as long as such circumstances prevail and such party continues to use commercially reasonable efforts to recommence performance or observance as soon as practicable, provided that:

- (a) Notice: whenever the Affected Party becomes aware that such a result has occurred or is likely to occur, the Affected Party will, as soon as practicable, notify the other party by written notice accordingly;
(b) Continued Performance: each party will continue to use commercially reasonable efforts to perform its obligations as required under this Agreement; and
(c) No Deemed Acceptance of Extra Costs: neither party will be deemed to have accepted any liability to pay or share any extra costs which may be incurred by the other party in complying with this clause or otherwise resulting from such act, omission or failure; and
(d) Charges: this clause 11.3 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

12. License

12.1 Grant of License: PX grants to Customer a limited, non-exclusive, non-transferable, non-assignable, revocable license to use Payment Express, the Software and the Documentation for the Term of this Agreement solely for the Permitted Use. Any other use or dealings with Payment Express, the Software or the Documentation without the prior written consent of PX will be a material breach of this Agreement. Except to the extent specifically authorized under this Agreement, Customer must not sub-license, transfer, assign, rent or sell any of Payment Express, the Software or the Documentation or the right to use Payment Express, the Software or the Documentation.

12.2 PX Warranty: PX warrants that PX has the right and authority to grant to Customer the license set out in clause 12.1, in accordance with the terms of this Agreement.

13. Terms of Use

13.1 Adequacy: Customer must satisfy itself as to the adequacy, appropriateness and compatibility of Payment Express for its requirements. Without limiting the foregoing, Customer acknowledges that it has not relied on any statements or representations on the part

of PX as to performance or functionality, verbal or otherwise, except as expressly recorded in this Agreement.

13.2 PX Logo: If Customer uses a capture method for credit or debit card processing using a system which is not hosted by PX, Customer agrees to display the PX Logo in a readily visible position on the user interface of Customer's system where the credit or debit card data is captured. The PX Logo must not be altered or used for any other purpose without the prior written consent of PX.

13.3 Compliance: If Customer is not compliant with one or more of the Security Standards, Customer must not capture or store any credit or debit card number or expiry date locally on Customer's or a non-compliant third party's system.

13.4 No Right to Copy, Alter or Modify: Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only. Except for such back-up copies, Customer must not, and must not permit any other person to, copy, reproduce, translate, adapt, vary, repair or modify all or any part of Payment Express, the Software or the Documentation by any means or in any form without PX's prior written consent.

13.5 Permitted Use: Customer may not:

- (a) use Payment Express, the Software or the Documentation for any purpose other than the Permitted Use; or
- (b) use the Software independently of the other components of Payment Express unless PX has given prior written consent to do so.

If this Agreement is terminated, Customer's right to use Payment Express, the Software and the Documentation will automatically terminate and Customer must immediately remove all copies of the Software from its system(s) and return Payment Express, the Software and the Documentation to PX

13.6 Reverse Engineering: Customer must not, and must not permit any other person to, reverse assemble or decompile the whole or any part of the Software.

13.7 No Third Party Use: Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, Payment Express, the Software or the Documentation or any component thereof in any form to any person (a "Third Party") without the prior written consent of PX. If PX grants such consent, Customer must ensure that the Third Party complies with the provisions of clauses 5, 10, 12, and 13 (so far as those provisions relate to Customer) as if the Third Party were a party to this Agreement. Customer will be liable to PX for all acts or omissions of any Third Party in contravention of the provisions of clauses 5, 10, 12, and 13.

14. General

14.1 Entire Agreement: This Agreement including all schedules hereto records the entire arrangement between the parties relating to all matters dealt with in this Agreement and supersedes all previous arrangements, whether written, oral or both, relating to such matters.

14.2 Disputes: The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place. If the parties fail to negotiate a resolution to a dispute within a reasonable time (not exceeding 20 Business Days from formal notice of the dispute being given by one party to the other), either party may require that the dispute be submitted to mediation through JAMS, such mediation to take place in Los Angeles, California. A mediator shall be selected by mutual agreement or through procedures provided by JAMS. In such case:

- (a) the mediator will not be acting as an expert or as an arbitrator;
- (b) the mediator will determine the procedure and timetable for the mediation; and
- (c) the parties will share equally the cost of the mediation.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

Neither party may issue any legal proceedings (other than for urgent interlocutory relief) relating to any dispute, unless that party has first taken all reasonable steps to comply with the dispute resolution process above. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in this clause 14.2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

14.3 Waiver: No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.

14.4 Severance: Any provision in this Agreement which is or becomes unenforceable, illegal or invalid for any reason shall be severed and shall not affect the enforceability, legality, validity or application of any other provision which shall remain in full force and effect.

14.5 Assignment: PX may assign all or any of its rights and obligations under this Agreement to any person without Customer's consent. Customer may not transfer or assign any of its liabilities or rights under this Agreement to any other person without PX's prior written consent.

14.6 Amendment: Except as expressly provided for in this Agreement, no amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorized senior representative of each party.

14.7 Governing Law and Jurisdiction: This Agreement is governed by the laws of California. Subject to the terms of clause 14.2, the parties submit to the jurisdiction of the courts of the State of California in respect of all matters relating to this Agreement.

14.8 Remedies: The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.

14.9 Subcontracting: PX may appoint subcontractors to perform any of its obligations under this Agreement.

14.10 Notices: Any notice or other communication to be given under this Agreement must be in writing and must be served by one of the following means and in respect of each is deemed to have been served as described:

- (a) By personal delivery – when received by the party.
- (b) By post by registered or ordinary mail – on the second working day following the date of posting in the United States mail to the addressee's registered office.
- (c) By email – when acknowledged by the party orally or by return email or otherwise in writing.
- (d) By facsimile – when sent to the correct facsimile number (with written transmission confirmation).

The addresses for the parties for Notices shall be as set out on Page 1 of this Agreement or such other address as either party specifies by notice in writing to the other given in accordance with this clause 14.10.

14.11 In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to PX or a reseller of PX goods or services, this Agreement shall govern and control.