

**PAYMENT EXPRESS AGREEMENT FOR LA CROSSE REGIONAL AIRPORT**

**DATED** this 8<sup>th</sup> day of February 2018

**PARTIES**

**PAYMENT EXPRESS INC. (PX)**

**Contact Details for Notices:**

Physical Address: 8939 S. Sepulveda Blvd, Suite 520, Los Angeles, CA 90045

Postal Address: P.O. Box 45498, Los Angeles, CA 90045

Email: contracts@paymentexpress.com

Phone: +1 310 670 7299

Fax: +1 310 670 7298

PX CustID: 59835

**CITY OF LA CROSSE (Customer)**

**Contact Details for Notices:**

Physical Address: 2850 Airport Road La Crosse, WI 54650

Postal Address: 2850 Airport Road La Crosse, WI 54650

Email: torpc@lseairport.com

Phone: 608.789.7456

Fax: 608.789.7469

**AGREEMENT**

1. PX is a provider of real time payment processing solutions in the USA. PX has agreed to supply solutions to Customer in accordance with the terms and conditions set out in this Agreement.
2. This Agreement is structured in two parts, namely Part A (Specific Terms) and Part B (General Terms). Part A contains the specific terms relevant to each supply of solutions to Customer and may include one or more Schedules. Part B sets out PX's general terms and conditions which will apply to all supplies of solutions.
3. It is intended that further supplies of solutions may be made and will be governed by this Agreement by way of the parties signing a further Part A Schedule for each supply. The attached schedules, or any schedules completed and signed after the date of this Agreement but referring to this Agreement, are a part of this Agreement

**EXECUTION**

**SIGNED** for and on behalf of  
**PAYMENT EXPRESS INC.** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title

\_\_\_\_\_  
Date

**SIGNED** for and on behalf of **CITY OF LA CROSSE** by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name/Title (Director / Authorized Signatory)

\_\_\_\_\_  
Date

**PART A – SPECIFIC TERMS**

**SCHEDULE 1 – SERVICES ACCESS ARRANGEMENT**

<b>1. SERVICES ACCESS ARRANGEMENT</b>	
(a)	<b>Payment Express:</b> PX grants to Customer a non-exclusive, non-transferable licence to use Payment Express for the Term solely for the purposes of the Permitted Use. Customer must not sub-license, transfer, assign, rent or sell Payment Express or the right to use Payment Express.
<b>2. TERM</b>	
(a)	<b>Commencement Date: 06/01/2018</b> Such Commencement Date may be postponed in writing, at PX’s sole discretion, until the date PX receives a copy of the Agreement countersigned by Customer.
(b)	<b>Initial Term: 24</b> months beginning on the Commencement Date, unless earlier terminated under Part B, clause 12.
(c)	<b>Renewal Term: 12</b> consecutive months, unless earlier terminated under Part B, clause 12, subject to automatic renewal pursuant to Part B, clause 2 if neither party gives three month’s advance notice of nonrenewal..
<b>3. FEES</b>	
(a)	<b>Establishment Fee: \$0.00</b> plus applicable taxes
(b)	<b>Minimum Monthly Fee: \$80.00</b> plus applicable tax per calendar month. Includes <b>1,000</b> Transactions per calendar month. Additional Transactions in each calendar month charged at the rate of <b>\$0.07</b> plus tax per Transaction.
(c)	<b>Additional Fees:</b> Additional users to the Payment Manager can be set up, but will incur a one off fee of <b>\$30.00</b> plus tax. If PX needs to configure or change additional electronic merchant numbers on the Payment Express Host, there is a fee of <b>\$100.00</b> plus tax per merchant account. Customer will be charged a <b>\$5.00</b> SAP fee per calendar month charge per connected card reader for SCR200 and IPP350 devices.
(d)	<b>Optional Risk Management Fees:</b> Implementation of 1 to 5 applied rules will be charged at <b>\$100.00</b> plus applicable taxes per calendar month. Implementation of 6 to 10 applied rules will be charged at <b>\$175.00</b> plus applicable taxes per calendar month.
(e)	<b>Development Fee (if requested by Customer): \$125.00</b> plus applicable tax per hour per person for testing and <b>\$175.00</b> plus applicable tax per hour per person for a Senior Developer.
(f)	<b>Price Adjustment:</b> PX shall have the right to vary the Fees enumerated in Part A of this Agreement during the Renewal Term of this Agreement by providing Customer at least 30 calendar days’ written notice before or during the Renewal Term. If PX exercises its right to modify the Fees, Customer shall thereafter have the right to terminate the Agreement with 30 days’ written notice to PX within 60 days of PX’s written notice that it is modifying the Fees.
<b>4. PAYMENT TERMS</b>	
(a)	<b>Check, Credit, Debit, or Automated Clearing House (“ACH”):</b> Customer will pay PX the Fees by check, credit card, debit card, or ACH on the dates specified below.
(b)	<b>Date for Payment of Establishment Fee:</b> Customer will pay PX the Establishment Fee immediately when PX makes the Payment Express Software available to Customer.
(c)	<b>Date for Payment of Monthly Fees, Additional Fees, Optional Risk Management Fees and Development Fees:</b> Customer will pay PX the Monthly Fees, Additional Fees, Optional Risk Management Fees and Development Fees on the 10th day of the month following the date of the invoice for those Fees.
<b>5. SUPPORT SERVICES</b>	
(a)	<b>Online Help and General Support:</b> PX will provide the Support Services to Customer as set out in Part B.
(b)	
<b>6. SPECIAL CONDITIONS</b>	
(a)	
<b>7. EXECUTION</b>	
The parties acknowledge and agree that this Schedule is governed by the Agreement between the parties containing PX’s General Terms and Conditions.	
<b>SIGNED</b> for and on behalf of <b>PAYMENT EXPRESS INC.</b> by:	<b>SIGNED</b> for and on behalf of <b>CITY OF LA CROSSE</b> by:
_____	_____
Signature	Signature
_____	_____
Name/Title	Name/Title (Director / Authorized Signatory)
_____	_____
Date	Date

**PART B – GENERAL TERMS AND CONDITIONS**

**1. Definitions and Interpretation** (Not all defined terms are applicable to all goods and services provided under the Agreement)

**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, including the Application Form, each of Part A and its Schedule(s) and Part B, and any attachments that may be agreed between the parties, as each may be amended in writing from time to time;

**Application Form** means Customer's online Payment Express application form submitted to PX via the PX Website. Where no separate Part A is entered into, the Application Form will constitute Part A of this Agreement for the purposes of this Part B;

**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 Bank 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.

**Commencement Date** means the commencement date recorded in Part A in one or more Schedules; Such Commencement Date may be postponed in writing, at PX's sole discretion, until the date PX receives a copy of the Agreement countersigned by Customer.

**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 in this Agreement and where applicable includes its employees, contractors and agents.

**Default Interest Rate** means interest at the rate of 2% above the base lending rate charged by PX's bankers to PX from time to time;

**Delivery** takes place when the Customer receives the Goods from PX, or, in the case of returns, when the Goods arrive at PX's premises;

**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);

**Emergency Support Services** means telephone support that PX may provide (but is not obligated to provide unless it agrees to do so in a separate written agreement) for emergency breakdowns resulting in repeated failures in the transmission of Transactions and is available 24 hours a day, seven days a week by calling 310 670 7299 outside of Support Hours. If applicable, PX will use reasonable efforts to respond to any emergency phone call within 30 minutes of receiving the support request;

**Fees** means and includes each of the fees detailed in the Schedule(s) contained in Part A;

**Goods** means the Goods and/or Devices (if any) recorded in Part A in one or more Schedules;

**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 and the Support Services;

**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;

**PX** means Payment Express Inc., a California corporation 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;

**Security Standards** means each of:

- (a) any data protection or data security standards issued by an Acquirer which receives and accepts Payment Express Supported Transactions from Customer; and
- (b) the PCI Standards;

**Special Conditions** means the special conditions (if any) recorded in Part A in one or more Schedules;

**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;

**Support Services** means and includes:

- (a) Online Help: from time to time PX may display Frequently Asked Questions and Answers on the PX Website;
- (b) General Support: enquiries may be sent to: support@paymentexpress.com or made by telephone to 310 670 7299. PX will respond to such enquiries during Support Hours;

**Support Hours** means the period from 8am to 9pm (PST) on any Business Day and 9am to 5pm (PST) on non-Business days;

**Term** means the Initial Term recorded in Part A in one or more Schedules and includes any Renewal Terms as recorded in Part A in one or more Schedules and defined in clause 2(b);

**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) all monetary amounts are stated exclusive of applicable taxes if any and in US dollars
- (g) in the event of any inconsistency between the terms of any of the following, they will have precedence in the descending order of priority set out below:
  - (i) Part A – Specific Terms and Schedules;
  - (ii) Part B – General Terms and Conditions;
  - (iii) The Application Form.

## 2. Term

**2.1 Initial Term:** This Agreement commences on the Commencement Date and will continue for the Initial Term, unless earlier terminated under Part B, clause 12.

**2.2 Renewal:** Upon expiry of the Initial Term, this Agreement will automatically continue for further periods of the number of consecutive months recorded in Part A in one or more Schedules (each such further period being a **Renewal Term**) on the same terms and conditions unless either party gives the other party not less than 3 months' notice in writing prior to the expiry of the Initial Term or the then current Renewal Term that it does not wish this Agreement to continue beyond the Initial Term or that Renewal Term as the case may be.

## 3. Payment

**3.1 Fees:** Customer will pay PX the Fees without setoff or deduction on the 10th day of the month following the date of the invoice for those Fees.

**3.2 Taxes:** Customer is responsible for all applicable taxes, duties and levies on the rental, loan or purchase or sale of goods and services (other than PX's income tax) assessed in connection with its use of Payment Express and the provision of services under this Agreement. To the extent that any Fees paid by Customer under this Agreement exclude any taxes or duties payable in respect of the Goods or Services provided under this Agreement in the jurisdiction where the payment is either made or received, where any such taxes or duties are payable by PX, Customer agrees to pay to PX the amount of such taxes or duties in addition to any Fees owed under this Agreement. Notwithstanding the foregoing, you may have obtained an exemption from relevant taxes or duties as of the time such taxes or duties are levied or assessed. In that case, you will have the right to provide to PX with evidence of any such exemption information, in which case PX will use reasonable efforts to provide such invoicing documents as may enable you to obtain a refund or credit for the amount so paid from any relevant revenue authority if such a refund or credit is available.

**3.3 Default Interest for Late Payment:** Subject to Part B, clause 3.4(c)(ii), Customer must pay PX interest at the Default Interest Rate on any overdue amounts under this Agreement, calculated daily from the due date until the actual date of payment. Customer will pay PX all costs and reasonable attorney's fees that PX incurs in attempting to recover or recovering any such overdue amounts, whether or not suit is filed.

**3.4 Disputed invoices:** Where Customer has reasonable grounds to dispute any portion of any amount invoiced by PX to Customer under this Agreement (**disputed portion**):

- (a) Customer will notify PX of such dispute and the grounds for such dispute within 5 Business Days of receiving the invoice;
- (b) any undisputed portion of the invoice will remain payable on the due date for payment;
- (c) provided that Customer has complied with clause 3.4(a), Customer will not be required to pay:
  - (i) the disputed portion until the parties' dispute has been resolved by agreement between the parties or in accordance with Part B, clause 19.2; or
  - (ii) any interest under clause 3.3 on the disputed portion unless the dispute is resolved with the effect that Customer is required to pay all (or part) of the disputed portion, in which case Customer will pay the interest on the disputed portion (or that part of that disputed portion) in accordance with clause 3.3. Interest will be payable from the date that payment would have been due under clause 3.1 but for the dispute until the date that disputed portion is paid to PX in full.

## 4. Mutual Responsibilities

Each party represents and agrees:

- 4.1 Power and Authority:** that it has full power and authority necessary to validly enter into and perform all its obligations under this Agreement; and
- 4.2 Requirements:** to comply with the other party's reasonable security, confidentiality and operational requirements of which it has been given reasonable notice.

## 5. Customer Responsibilities

Customer represents and agrees that it:

- 5.1 Suitability:** has made, and will continue to make, its own assessment of the suitability, adequacy, compatibility and appropriateness of Payment Express for its purposes;

**5.2 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;

**5.3 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;

**5.4 Responsibility for Use:** will accept all responsibility for the reliance on and use of Payment Express by Customer and its employees, contractors and agents;

**5.5 Obtain Equipment etc:** will obtain and maintain all equipment, software and services needed to enable it to receive and use Payment Express;

**5.6 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;

**5.7 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;

**5.8 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:

- (a) used by PX for the purpose of providing Payment Express, the Support Services and any other services to Customer; and
- (b) 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;

**5.9 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;

**5.10 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;

**5.11 Requisite Review of Payline Portal:** Customer shall be required, on a daily basis, to review with due care Customer's payline portal, established by PX, to review for transactions for errors. If an error is discovered by Customer, Customer must notify PX in writing within three (3) Business Days of the date an 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, on a daily basis review with due care bank settlement files to ensure deposits occur without error. If an error is discovered by Customer, Customer must notify PX in writing within three (3) Business days of the date an 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. PX's liability under this Section 5.11 (Requisite Review of Payline Portal) of the Agreement is governed by, and fully subject to, the terms of Section 10 of this Agreement.

**5.12 Comply with Law Generally:** will comply with all relevant laws in its use of Payment Express and carrying out its obligations under this Agreement.

**5.13 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.

## 6. PX's General Responsibilities

PX agrees that it will:

- 6.1 Care and skill:** perform its obligations under this Agreement with ordinary care, skill and diligence; and
- 6.2 Good faith:** comply with all relevant laws and co-operate with Customer (and Customer's service providers) in connection with Payment Express.
- 6.3 No Requirement to Decrypt Tokenized Data:** PX will be under no obligation to decrypt and transmit Tokenized Data to Customer or any third party.

## 7. PX Warranties

**7.1 Security Standards:** PX confirms that PX will throughout the term of this Agreement comply with the requirements of the Security Standards.

**7.2 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:

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

- (c) that the Goods will be free of defects in design, materials or workmanship or will comply with any applicable equipment manufacturer's or software developer's specifications.

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 Bank, processor or PX that a transaction is or will be deemed valid and not subject to dispute, debit or chargeback.

**7.3 Supply Warranty:** PX warrants that the Goods to be delivered under this Agreement will be free from defects in workmanship (labour and parts included, but transport excluded) during a warranty period commencing on the Commencement Date and concluding twelve (12) calendar months later. As to repaired or exchanged Goods, during the original warranty period here above mentioned, the warranty period on the exchanged or repaired Goods shall expire three (3) months after the date of repair or exchange of such Goods or upon the expiration of the warranty period applicable to the original Goods set forth in this Section. With respect to PX's supply warranty:

- (a) Any defective Goods, under warranty, shall be replaced or repaired, free of charge, at PX's discretion (to the exclusion of compensation for any other damage), and the work shall be carried out at PX or its partner's or subcontractor's premises. Customer will pay the costs of transport of the Goods (including insurance) to PX.
- (b) PX has the choice to repair the Goods with spare parts or new parts. The defective elements, repaired, will become the property of PX.
- (c) The time when the Goods are repaired or unavailable during the warranty period will not give rise to an extension of the warranty period as set forth in this Section, subject to legal mandatory provisions.

**7.4 Exclusions to Supply Warranty:** PX will have no liability under the Supply Warranty described in Section 7.3 in respect of:

- (a) Defects, breakdowns, or malfunctions due to failure to properly follow the installation process and instructions for use or an external cause to the Goods (including, but not limited to, shock, lightning fire, vandalism, malicious action, contacts with various liquids or vermin or water damage of any nature, and inappropriate electric voltage); or modifications to the Goods made without the written approval of PX; or a lack of every day maintenance (as described in the Documentation); or a lack of supervision or care; or improper storage or poor environmental conditions, particularly those related to temperature and hygrometry effects of variations of electric voltage from the electric network; or from the earth or repair work; or maintenance of the Goods by persons not authorized by PX;
- (b) Damage due to insufficient or bad packaging of the Goods when returned to PX;
- (c) Wear and tear from normal use of the Goods and accessories;
- (d) Communication problems related to an unsuitable environment, including problems accessing the Internet, transmission faults, local network faults, and modification of the parameters of the relevant cellular network after sale of the Goods.
- (e) Supply of new versions of Software;
- (f) Malfunction due to the use of products or accessories that are non-compatible with the Goods;
- (g) Goods returned to PX without PX's prior consent.

## 8. Intellectual Property

**8.1** All Intellectual Property rights in Payment Express, the Goods, the Software, the Tokenized Data, 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:

- (a) Payment Express, the Goods, the Software, the Tokenized Data, the Documentation or any part thereof; or
- (b) 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 8.

## 9. Indemnity

This section intentionally removed

## 10. Liability

To the fullest extent permitted by applicable law:

**10.1 Remedy:** Subject to clauses 10.2 and 10.3, 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.

**10.2 Limitation:** In no event will PX's total liability to Customer under this Agreement for any one or more defaults as described in clause 10.1 exceed the amount paid by Customer to PX under this Agreement in the 3 months following execution of this Agreement.

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

- (a) 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
- (c) any event described in Part B, clause 14 (Force Majeure).

## 11. Commercial Purpose

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

## 12. Termination

### 12.1 Termination Upon Notice:

- (a) PX may terminate this Agreement at any time on not less than 3 months' prior written notice to Customer.
- (b) Customer may terminate this Agreement at any time on not less than 3 months' prior written notice to PX, provided:
- (i) During the Initial Term, Customer will be liable for the Fees for the remainder of the Term, which, notwithstanding clause 3.1, shall be payable immediately on giving such notice;
- (ii) During any Renewal Term, Customer will be liable for the Fees for the remainder of the Term, which, notwithstanding clause 3.1, shall be payable immediately on giving such notice.

**12.2 Termination for Cause:** Either party (the **First Party**) may terminate this Agreement at any time and with immediate effect by written notice to the other party (**Second Party**) if the Second Party:

- (a) is in material breach of any of its obligations under this Agreement, and has failed to remedy the breach within 10 Business Days of receiving written notice from the First Party to remedy the breach; or
- (b) goes into voluntary or involuntary bankruptcy or liquidation or has a receiver appointed; or
- (c) is unable to pay its debts as they fall due.

**12.3 Breach of License Terms:** Without limiting clause 12.2, any use of Payment Express, the Goods, the Software, or the Documentation by Customer for any purpose other than the Permitted Use, or any breach by Customer of the provisions of Part B, clause 16 will be deemed to be a material breach of this Agreement which is not reasonably capable of remedy.

### 12.4 Consequences:

- (a) Amounts owing at termination: If this Agreement is terminated by PX for cause prior to the expiry of the Term, Customer must pay the unpaid balance of the Fees due under this Agreement and the cost of PX's reasonable expenses including attorney's fees resulting from Customer's breach of this Agreement.
- (b) Expiry or 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 Part B, clauses 3, 5(h), 7, 8, 9, 10, this 12.4, 13, 16, 17 and 19, together with those clauses which are incidental to, and required in order to give effect to, those clauses).

## 13. Confidentiality

**13.1 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).

**13.2 PX's Intellectual Property:** Customer acknowledges and agrees that the computer programs, computer software, specifications, data, images, designs, codes, and configurations, ("Software") 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 13.1, Customer will treat information about PX's Intellectual Property as the Confidential Information of PX.

**13.2 Legally Mandated Disclosure Controls:** Notwithstanding the terms of Part B, clauses 13.1 and 13.2 of this Agreement, to the extent Customer's confidentiality obligations per the terms of this Agreement conflict with Customer's legally mandated duties of disclosure, Customer's legally mandated duties of disclosure shall control.

#### **14. Force Majeure**

**14.1** 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.

**14.2** 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 14.1.

**14.3** 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 14 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.

#### **15. License**

**15.1 Grant of License:** PX grants to Customer a non-exclusive, non-transferable license to use Payment Express, the Goods, 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 Goods, 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 Goods, the Software or the Documentation or the right to use Payment Express, the Goods, the Software or the Documentation.

**15.2 PX Warranty:** PX warrants that PX has the right and authority to grant to Customer the license set out at clause 15.1, in accordance with the terms of this Agreement.

#### **16. Terms of Use**

**16.1 Adequacy:** Customer must satisfy itself as to the adequacy, appropriateness and compatibility of Payment Express and/or the Goods 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.

**16.2 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.

**16.3 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.

**16.4 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 Goods, the Software or the Documentation by any means or in any form without PX's prior written consent.

**16.5 Permitted Use:** Customer may not:

- (a) use Payment Express, the Goods, 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 Goods, the Software and the Documentation to PX

**16.6 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.

**16.7 No Third Party Use:** Except as expressly provided for in this Agreement, the Customer must not provide, or otherwise make available, Payment Express the Goods, 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 8, 13, 15 and 16 (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 8, 13, 15 and 16.

**16.8 Installation:** Customer will be responsible for, and all bear all costs associated with, the installation, operation, maintenance and support of the Goods.

**16.9 PX Testing Prior to Launch:** Prior to any permitted use of PX products and/or Software by Customer or any third party, PX shall be entitled to test all PX products and Software that Customer purchases, rents, or intends to use for at least seven (7) Business Days ("Pre-launch Testing"). Such Pre-launch Testing shall also entitle PX to at least three (3) Business Day to test transaction processing and settlement.

**16.10 Labels:** Customer will not remove or deface any labels affixed by PX to the Goods. Customer will not affix any label to the Goods.

#### **17. Rental/Loan of Goods**

**17.1** Where Customer agrees to rent or borrow Goods from PX, the following terms and conditions apply:

- (a) **Ownership:** Legal and beneficial ownership of, and title to, Payment Express, the Goods, the Software and the Documentation remains at all times with PX;
- (b) **Risk:** Customer will bear the risk of, and be responsible for, all loss (including theft) of or damage to, the Goods from the time that they are first delivered to Customer until the time that they are delivered back to PX;
- (c) **Maintain Goods:** Customer must take reasonable steps to avoid exposure of the Goods to excessive heat, dust and moisture, liquids and electrical and physical shock;
- (d) **License Terms:** Customer must comply with all manufacturer's license terms applicable to the Goods (as supplied with the Goods or otherwise notified by PX to Customer from time to time);
- (e) **Theft, Seizure, Loss, Damage, Repairs:** If for any reason the Goods are stolen, seized, lost, damaged or require repairs, Customer must immediately advise PX of the theft, seizure, loss, damage or repairs required. Customer must pay all costs and comply with PX's directions in connection with replacing or recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear excepted). Customer must continue to pay the Fees while the Goods are being replaced or repaired or, in the event of theft, seizure or loss, while the Goods are missing. PX will not be liable for any loss or damage in relation to the unavailability of the Goods;
- (f) **No Dealing or Modifying or Security Interests:** Customer must not sell, lend, lease, transfer, modify or otherwise deal with the Goods without first obtaining PX's written consent. Customer must not create, or allow to be created, a security interest over the Goods;
- (g) **Inspection:** Customer must allow PX to inspect the Goods at any time during normal business hours, provided that PX first gives Customer not less than 2 Business Days notice;
- (h) **Return of Goods:** When this Agreement ends (either by completion of the Term or by way of termination), Customer will, at Customer's expense, return the Goods, in good working order and undamaged condition (fair wear and tear excepted) to PX's place of business. If the Customer fails to return the Goods within 14 Business Days of the end

of the Agreement, Customer will pay PX the fair value of the Goods as at the completion of the Term;

- (i) **Repossession:** If Customer does not return the Goods when required hereunder, PX may (subject to compliance with applicable law) enter any premises where PX reasonably believes that the Goods may be located and Customer will provide all reasonable authority and assistance to enable recovery of those Goods by PX. Customer will be liable to PX for all costs (including reasonable attorney's fees) incurred by PX in recovering the Goods; and
- (j) **Further supply:** The rental of Goods by PX to Customer does not guarantee Customer that PX will supply Goods beyond the Initial Term

## 18. Payment Express Support Services

**18.1 Support:** PX will provide the Support Services to Customer.

**18.2 Emergency Support Services and Other Services:** PX may make available the Emergency Support Services. If Customer requires Emergency Support Services and/or services additional to the Support Services PX may, if it agrees to provide those services to Customer, charge Customer for those services on a time and materials basis and on such other terms and conditions as may be agreed between the parties.

**18.3 Alterations to Software:** PX may, at its sole discretion, alter, upgrade, update or change Payment Express at any time during the Term of this Agreement. Where PX believes that such alteration, upgrade, update or change will, or is likely to, materially affect Customer's use of Payment Express, PX will endeavor to notify Customer of this in advance. Customer acknowledges and agrees that, if Customer fails to promptly install all updates to any software forming part of Payment Express supplied by PX in connection with this Agreement, Customer may be unable to process Transactions and that:

- (a) PX will not be liable to Customer under this Agreement in respect of such inability; and
- (b) PX will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.

**18.4 PX Website:** Customer acknowledges and agrees that PX may, at its sole discretion, determine what information, data, features and functionality is made available to Customer via the PX Website. Customer agrees to comply with any terms that PX may specify in relation to Customer's use of the PX Website. In the event of any inconsistency between the terms and conditions of this Agreement and those on the PX Website, the terms and conditions of this Agreement will apply to the extent of that inconsistency. PX will supply user names and passwords to enable authorized users of Customer to access the PX Website. Customer must keep such user names and passwords secure and made known only to authorized users and will be responsible for all use of the PX Website through use of Customer's user names and passwords. If Customer breaches any term of this Agreement or the terms of use of the PX Website, PX may disable Customer's user names and passwords.

**18.5 Offline Mode:** Customer hereby authorizes PX to enable processing of credit cards offline in the event of an internet failure ("Offline Mode"). Additionally, Customer authorizes PX to enact service in Offline Mode until internet service is restored for a maximum of 4 hours per event. Transactions in Offline Mode shall be capped at fifty (50) dollars maximum per transaction per card, and a maximum of five-hundred (500) transactions processed per device per Offline Mode event, and a maximum of one-thousand (1000) dollars per device per Offline Mode event. Customer and PX agree and acknowledge that PX will not be liable for unsuccessful transactions that are a result of Offline Mode transaction processing. Customer shall be responsible with acquiring approval from its banking partner for operation of Offline Mode. PX will not be liable if the terms of Clause 18.5 or the operation of Offline Mode causes Customer's account to be downgraded, shut down, disrupted, or otherwise adversely impacted.

**18.6 Refunds:** Customer authorizes PX to process repayment transactions to its patrons, who have previously made payment using PX solutions, on a one-to-one matching basis ("Refund Transactions"). Customer shall be solely responsible for auditing Refund Transactions and determining that a one-to-one match is made between a transaction and its matching Refund Transaction. For Customer to have access to the Refund Transactions solution, Customer shall have the duty to explicitly activate the "Refund Any Card" feature in its account. Customer accepts all liability for Refund Transactions. PX shall not be liable for any losses or damages incurred as a result of a Refund Transaction.

## 19. General

**19.1 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.

**19.2 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 19.2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

**19.3 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.

**19.4 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.

**19.5 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 (such consent not to be unreasonably withheld, provided PX is satisfied as to the suitability of the assignee and Customer pays to PX its reasonable costs incurred in connection with the assignment).

**19.6 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.

**19.7 Governing Law and Jurisdiction:** This Agreement is governed by the laws of California. Subject to the terms of clause 19.2, the parties submit to the jurisdiction of the courts of the State of California in respect of all matters relating to this Agreement.

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

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

**19.10 Counterparts and copies:** This Agreement may be signed in any number of counterpart copies which, read together, will constitute one and the same document. Any facsimile copy of this agreement or copy of this agreement sent via email in PDF format (including any facsimile copy or copy sent via email in PDF format, of any document evidencing either party's signature of this agreement) may be relied upon by the other party as if it were an original copy. This Agreement may be entered into on the basis of an exchange of such facsimile or PDF copies.

**19.11 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 19.11.

**19.12 Conflicts:** In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order made by Customer to PX, this Agreement shall govern and control.