

GENERAL TERMS AND CONDITIONS

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, including the Application Form, 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, and (subject to this Agreement, clause 1.2(i));

Business Day means any day of the week except Saturday, Sunday or a statutory holiday in Auckland, New Zealand;

Commencement Date means the commencement date recorded in this Agreement. Such Commencement Date may be postponed, 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
- (d) 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.

Customer Personal Data means all Personal Data subsisting in the data provided by the Customer, the users of Payment Express, the Documentation, the Goods, or the Software, or input by PX on the Customer's behalf and which comes into the possession of PX as a result of or in connection with the supply of the Payment Express, the Documentation, the Goods, or the Software.

Data Protection Law means the EU Data Protection Directive 95/46/EC, the Data Protection Act 1998 and any other legislation in force from time to time which implements that Directive, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and any laws that replace or amend any of these (including without limitation the General Data Protection Regulation 2016 (Regulation (EU) 2016/679) (GDPR)), together with the equivalent legislation of any other applicable jurisdiction and all other applicable law, regulations, guidance and codes of conduct in any relevant jurisdiction relating to the processing of personal data and privacy including the guidance and codes of practice issued by the Information Commissioner's Office (ICO), the Article 29 Working Party, the European Data Protection Board or any other relevant supervisory authority from time to time.

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 provided by PX 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 09 377 6060 outside of Support Hours. 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 this Agreement;

Goods means the Goods and/or Devices (if any) recorded in this Agreement;

Insolvency Event means:

- (a) a party is, in the reasonable belief of the other party, or is deemed to be, insolvent or unable or (being an individual) is deemed to have no reasonable prospect of being able (or admits its inability) to pay its debts as they fall due or stops or suspends payment of any of its debts or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) any expropriation, attachment, sequestration, distress, execution, enforcement of security or other legal process is levied, enforced or sued out on or against, or affects, any of a party's assets and is not discharged or stayed within 21 days;
- (c) a party begins negotiations, or enters into, or gives notice of any intention to enter into, any statutory composition or arrangement, with one or more of its creditors in order to reschedule any of its obligations to pay or repay money (whether present of future, actual or contingent) (**Indebtedness**) because of actual or anticipated financial difficulties including giving notice of a meeting of creditors for the purpose of considering a proposal for a company voluntary arrangement or (being an individual) an individual voluntary arrangement;
- (d) a moratorium is declared, or in any event comes into existence, over any of a party's Indebtedness (and remains undischarged after 5 Business Days);
- (e) any petition is presented (and has not been dismissed, discharged or withdrawn after 5 Business Days of being advertised), application made (and, if not made by the party itself, has not been dismissed, discharged or withdrawn after 14 days), resolution proposed, notice of meeting given or other action, proceedings, procedure or step taken whether by a party or any third party for, or which may (other than for the sole purpose of a scheme for a solvent amalgamation or solvent reconstruction of that party) lead to: (i) the suspension of payments, winding up, dissolution, administration, receivership (whether administrative or otherwise) or reorganisation using a voluntary arrangement, scheme of arrangement or otherwise) of a party; (ii) the appointment of a liquidator (both provisional and following a winding up), receiver (including a fixed charge receiver), administrative receiver, administrator, nominee, supervisor, compulsory manager or other similar officer in respect of a party or any of its assets; or (iii) (where the party is an individual,) bankruptcy, an individual voluntary arrangement or debt relief order;
- (f) any event similar to any of those set out above in this definition occurs in relation to a party (including in any jurisdiction to which it is subject); or
- (g) a party suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business;

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;

Personal Data and Processing shall bear the respective meanings given to them in the Data Protection Act 1998 or General Data Protection Regulation 2016 (as applicable) (in each case as may be amended, updated, replaced or superseded from time to time) (and **Process** and **Processes** shall be construed accordingly).

PX means Payment Express International Limited, a company incorporated in New Zealand (company number 1278310);

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;

Related Company has the meaning given to that term in section 2(3) of the Companies Act 1993 (New Zealand) except that all references in that definition to a "company" will be deemed to include a company or body corporate incorporated outside of New Zealand;

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 this Agreement;

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 0800 PAYMENT (729 6368). PX will respond to such enquiries during Support Hours;

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

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.

Term means the Initial Term recorded in this Agreement and includes any Renewal Terms as recorded in this Agreement and defined in clause 2.2;

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) expressions defined in this Agreement, clause 1.1 have the defined meaning throughout this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) clause and other headings are for ease of reference only and will not affect this Agreement's interpretation;
- (d) the term **includes** or **including** (or any similar expression) is deemed to be followed by the words without limitation;
- (e) 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;
- (f) references to any statutory provision are to statutory provisions in force in New Zealand and include any statutory provision which amends or replaces it, and any bylaw, regulation, order, statutory instrument, determination or subordinate legislation made under it;
- (g) any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done; and
- (h) all monetary amounts are stated exclusive of GST and in New Zealand dollars
- (i) 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) 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 this Agreement, 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 this Agreement (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 GST and any other taxes, duties and levies (other than PX's income tax) assessed in connection with its use of Payment Express and the provision of services under this Agreement.

3.3 Default Interest for Late Payment: Subject to this Agreement, clause 3.4, 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 (including collection costs and legal costs on a solicitor-client basis) that PX incurs in attempting to recover or recovering any such overdue amounts.

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 five (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 this Agreement, 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 this Agreement, clause 21.2; 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. Joint 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:

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 authorised persons use Payment Express and that Payment Express is used only for the Permitted Use and as expressly authorised 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 Related Companies 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; and

5.11 Comply with Law Generally: will comply with all relevant laws, including all statutory, regulatory and common laws, in its use of Payment Express and carrying out its obligations under this Agreement.

5.12 Requisite Review of Payline Portal and Bank Settlement Files: PX has established a web-based payment management client that permits Customer to process credit card transactions manually, process refunds, set up recurring payments, generate reports, and review for transaction errors ("Payline Portal"). Customer is required to review Customer's Payline Portal on a daily basis with due care to ensure no transaction errors have occurred. If an error is discovered by Customer, Customer must 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, 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 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. PX's liability under this Section 5.12 (Requisite Review of Payline Portal and Bank Settlement Files) of the Agreement is further governed by, and fully subject to, the terms of Section 10 (Liability) of this Agreement.

5.13 Improperly Deposited Funds: If PX deposits funds in Customer's bank account(s) that do not rightfully belong to Customer ("Improperly Deposited Funds"), Customer shall return the Improperly Deposited Funds to PX without offset 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 a solicitor-client basis) incurred by PX in recovering the Improperly Deposited Funds.

5.14 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 the warranty set forth in this Agreement, clause 7.3 of this Agreement. 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.

6. PX's General Responsibilities

PX will:

6.1 Care and skill: perform its obligations under this Agreement with 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: Unless expressly required to do so by law, 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 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.

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.
- (d) Customer must return warranted Goods that are replaced subject to this warranty back to PX within 30 calendar days of replacement Goods being shipped to Customer. Customer shall pay the shipping fees to return the old, warranted Goods back to PX.

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

- (i) 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;
- (ii) 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;
- (a) Goods returned to PX without PX's prior consent or that PX has not had an opportunity to troubleshoot;
- (b) Defects, breakdowns, or malfunctions due to **obstructing material** being placed on or into the Goods. Examples of obstructing material includes, but is not limited to, paper, plastic, and metal objects apart from credit and debit cards.

8. Intellectual Property

All Intellectual Property rights in Payment Express, the Goods, 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:

8.1 Payment Express, the Goods, the Software, the Documentation or any part thereof; or

8.2 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

9.1 Customer indemnifies PX at all times against any liability, loss, damage or cost (including legal costs on a solicitor-client basis) 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.

10. Liability

To the fullest extent permitted by applicable law:

10.1 Remedy: Subject to this Agreement, 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 this Agreement, 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) loss of data, lost profits, loss of revenue, loss of goodwill, loss of business or for any indirect, consequential or special loss, damage, cost or expense suffered or incurred by Customer arising out of, or in connection with, this Agreement;
- (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 this Agreement, clause 14.

11. Consumer Guarantees Act

11.1 It is expressly acknowledged and agreed by Customer that Payment Express, the Goods, the Software and the Documentation are supplied to Customer for business purposes and that the provisions of the Consumer Guarantees Act 1993 do not apply.

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 liquidation or has a receiver appointed; or
 - (c) is unable to pay its debts as they fall due (as that term is defined in section 287 of the Companies Act 1993).
- 12.3 Breach of Licence Terms:** Without limiting this Agreement, clause 12.2(a), 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 this Agreement, clause 16 will be deemed to be a material breach of this Agreement which for the purposes of clause 12.2(a) Customer has failed to remedy.
- 12.4 Consequences:**
- (a) Amounts owing at termination: If this Agreement is terminated by either party 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 in terminating 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 this Agreement, clauses 3, 5.9, 7, 8, 9, 10, this 12.4, 13, 16, 17, 18, 19, 21.2 and 21.7, 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:
- (a) required by law;
 - (b) 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;
 - (c) 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;
 - (d) that the information is developed independently by the receiving party without reliance on any of the Confidential Information of the other party;
 - (e) authorised in writing by the other party; or
 - (f) 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:** Without limiting the effect of clause 13.1, Customer will treat information about PX's Intellectual Property as the Confidential Information of PX.
- 14. Force Majeure**
- Neither party (**Affected Party**) will be liable for any act, omission or failure by it under this Agreement if that act, omission or failure results directly from an event or circumstances beyond the reasonable control of the Affected Party, provided that:
- 14.1 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;
- 14.2 Continued Performance:** each party will continue to use its best endeavours to perform its obligations as required under this Agreement; and
- 14.3 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
- 14.4 Charges:** this clause 14 will not apply in respect of Customer's obligation to pay any charges or Fees payable under this Agreement.
- 15. Licence**
- 15.1 Grant of Licence:** PX grants to Customer a non-exclusive, non-transferable licence 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 authorised 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 licence 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 this Agreement, clause 7.1, 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:** Subject to this Agreement, clause 16.8, 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 (**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 15.1, 16, 8 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 15.1, 16, 8 and 13.
- 16.8 Backup Copies:** Customer may make a reasonable number of copies of the Software for backup and disaster recovery purposes only.

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

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.

16.11 PX Testing Prior to Launch: Prior to any permitted use of PX products and/or Software by Customer or any third party, PX shall, at its sole discretion, 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 Days to test transaction processing and settlement.

17. Rental/Loan of Goods

17.1 Where Customer agrees to rent/loan 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) **Licence Terms:** Customer must comply with all manufacturer's licence 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 recovering the Goods, repairing any damage or the replacing of any parts (fair wear and tear accepted). Customer must continue to pay the Fees while the Goods are being 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 two (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 in accordance with this Agreement, clause 17.1(h), PX may 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 legal costs on a solicitor-client basis) incurred by PX in recovering the Goods; and
- (j) **Further supply:** The rental/loan of Goods by PX to Customer does not guarantee Customer that PX will supply Goods beyond the Initial Term.

18. Purchase of Goods

18.1 Where Customer agrees to purchase Goods from PX, the following terms and conditions apply:

- (a) **Title:** Title in any of the Goods (excluding any Software and firmware forming part of, or supplied with, the Goods) will pass to Customer upon Customer making payment in full for those Goods;
- (b) **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;
- (c) **Risk:** Risk in any of the Goods will pass to Customer upon delivery of those Goods to Customer;
- (d) **Licence to Software/Firmware:** Customer will be licensed to use any third party software and/or firmware forming part of, or supplied with, the Goods on the relevant manufacturer's or software developer's licence terms (as supplied with the Goods or otherwise notified by PX to Customer). Customer must comply with all such licence terms;
- (e) **Warranty:** PX will repair or replace, at PX's option, faulty Goods for a period of 1 year commencing from the date the Goods are delivered to Customer, fair wear and tear excepted and provided damage is not caused by the Customer i.e. liquid damage is not covered by this warranty;
- (f) **Hold for Benefit of Customer:** Where it is unable to pass to Customer any manufacturer's warranties in respect of any of the Goods supplied to Customer under this Agreement, PX will hold any such warranties for the benefit of Customer; and
- (g) **Recovery of Unpaid Retail Equipment:** If Customer fails to pay PX in full for any Goods which have been delivered, PX may 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 legal costs on a solicitor-client basis) incurred by PX in recovering the Goods.

19. PPSR

19.1 Property in the Goods shall not pass from PX to Customer until Customer has paid all monies outstanding from Customer to PX on any account in full.

19.2 Customer grants to PX a security interest, as defined in the Personal Property Securities Act 1999 ("PPSA"), in the Goods and their proceeds, and in all Customer's present and after acquired property, and Customer acknowledges that the granting of the security interest gives rise to remedies of repossession of the Goods in accordance with the PPSA or otherwise where PX seeks to enforce their security interest.

19.3 Customer agrees to store the Goods separately and mark them so as to render them identifiable as being made from or with Goods which are the property of PX. Further, Customer agrees to advise PX of the whereabouts of the Goods and allow PX to inspect the Goods.

19.4 Customer will, at PX's request, promptly execute any documents, provide all necessary information and do anything else required by PX to ensure that their security interest in the Goods is perfected in accordance with the PPSA with such priority as PX requires.

19.5 Customer waives its rights under the PPSA to receive a copy of any verification statement otherwise required by the PPSA. If applicable, so far as permitted by section 107 of the PPSA Customer will have no rights under sections 114(1) (a), 120 and 133 of the PPSA, including the right to receive any notices. Customer agrees that PX may exercise its rights under sections 109 and 120 concurrently, and that repossession and retention of Goods under sections 120 – 123 will immediately extinguish any rights and/or interests Customer may have in the Goods. PX may allocate any monies they receive to debts, charges and expenses in any priority.

19.6 Customer agrees that PX may charge Customer for the costs of registration of a financing statement and all other costs associated with the perfection and enforcement of the security interest (including full client/solicitor costs).

20. PX Support Services

20.1 Support: PX will provide the Support Services to Customer.

- 20.2 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.
- 20.3 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 endeavour 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:
- PX will not be liable to Customer under this Agreement in respect of such inability; and
 - PX will be released from any obligation to supply the Support Services during any period which Customer has failed to install any such update.
- 20.4 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 authorised users of Customer to access the PX Website. Customer must keep such user names and passwords secure and made known only to authorised 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.
- 20.5 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 500 transactions processed per device per Offline Mode event. Transactions in Offline Mode shall also be capped at \$1000 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 20.5 (Offline Mode) or the operation of Offline Mode causes Customer's account to be downgraded, shut down, disrupted, or otherwise adversely impacted.
- 21. General**
- 21.1 Entire Agreement:** This Agreement 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.
- 21.2 Disputes:** 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, such mediation to take place in Auckland, New Zealand. If the parties fail to agree on a mediator within 5 Business Days after the submission to mediation, one will be appointed by the President for the time being of the New Zealand Law Society or its successor. In the event of any submission to mediation:
- the mediator will not be acting as an expert or as an arbitrator;
 - the mediator will determine the procedure and timetable for the mediation; and
 - the parties will share equally the cost of the mediation.
- All discussions in mediation will be confidential and without prejudice.
- 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.
- 21.3 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.
- 21.4 Severance:** Any provisions 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.
- 21.5 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 meets PX's reasonable costs in relation to the assignment).
- 21.6 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 authorised senior representative of each party.
- 21.7 Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand and the parties submit to the jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.
- 21.8 Remedies:** The rights, powers and remedies provided in this Agreement are not exclusive of any rights, powers or remedies provided by law.
- 21.9 Subcontracting:** PX may appoint subcontractors to perform any of its obligations under this Agreement.
- 21.10 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.
- 21.11 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:
- By personal delivery – when received by the party.
 - By post by registered or ordinary mail – on the second working day following the date of posting to the addressee's registered office.
 - By email – when acknowledged by the party orally or by return email or otherwise in writing.
 - 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.
- 21.12 Conflicts:** In the event of any conflict or inconsistency between this Agreement and the terms of a purchase order provided by Customer to PX, this Agreement will govern and control.
- 22. General Data Protection Regulation (GDPR) Compliance Provisions**
- 22.1** The Customer, to the extent it is a data controller, warrants and represents that:
- it will comply at all times with the Data Protection Law and not do or cause anything to be done or omit to do anything that would, or is likely to, place PX in breach of the Data Protection Law; and
 - it has provided all information necessary to, and obtained any requisite consent from, any individual who is the subject of the Customer Personal Data for the purpose described under this Agreement in accordance with its obligations under the Data Protection Law.

- 22.2 Taking into account the state of technical development and the nature of Processing, PX shall implement appropriate technical and organisational measures to protect the Customer Personal Data against accidental or unlawful destruction, loss, alteration and unauthorised disclosure or access.
- 22.3 As at the date of this Agreement, the Customer gives a general written authorisation to PX to engage any agent, sub-contractor or other third party ("**Sub-processor**") subject to PX informing the Customer of any intended changes concerning the addition or replacement of any Sub-processors and allowing the Customer to object to such changes. If the Customer does object to any Sub-processor, then PX will not use that Sub-processor. If any Sub-processor is identified as an authorised Sub-processor and used by PX for such Sub-processing services, the Customer consents to their appointment as a Sub-processor under this Agreement subject to PX putting in place an agreement with such Sub-processor in accordance with the requirements under this clause.
- 22.4 To the extent that PX Processes any Customer Personal Data, PX shall:
- (a) only Process the Customer Personal Data in accordance with its provision of Payment Express, the Goods, the Documentation, and the Software in accordance with this Agreement and on the documented instructions of the Customer from time to time;
 - (b) subject to Clause 22.5, not transfer, or otherwise directly or indirectly disclose, any the Customer Personal Data to countries outside the European Economic Area (EEA) without the prior written consent of the Customer except where PX is required to transfer the Customer Personal Data by the laws of the member states of the EU or EU law (and shall inform the Customer of that legal requirement before the transfer, unless those laws prevent it doing so);
 - (c) ensure that access to the Customer Personal Data is limited to PX's personnel and authorised Sub-Processors who need access to it to satisfy its obligations under this Agreement and who are subject to an enforceable obligation of confidence with regards to the Customer Personal Data;
 - (d) taking into account the nature of the Processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, in relation to any request from any data subject for: access, rectification or erasure of the Customer Personal Data, or any objection to Processing;
 - (e) notify the Customer in writing without undue delay if any the Customer Personal Data has been disclosed in breach of this Clause 22;
 - (f) notify the Customer promptly if it becomes aware of a breach of security of the Customer Personal Data, such notices shall include full and complete details relating to such breach;
 - (g) provide such assistance (at the Customer's cost) as the Customer may reasonably require in relation to:
 - (i) the need to undertake a data protection impact assessment in accordance with the Data Protection Law; and
 - (ii) any approval of the Information Commissioner or other data protection supervisory authority to any Processing of the Customer Personal Data; and
 - (iii) on termination of this Agreement, at the Customer's cost and its option, either return all of the Customer Personal Data (and copies of it) or securely dispose of the Customer Personal Data except to the extent that any applicable legal requirement mandates PX to store the Customer Personal Data.
- 22.5 PX shall be permitted to transfer the Customer Personal Data to countries outside of the EEA to the extent that any one or more of the following applies:
- (a) PX has in place with the non-EEA receiving entity the EU model contractual clauses as set out in Decision 2010/87/EU or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time;
 - (b) the transfer is to a non-EEA country that is deemed to have an adequate level of protection from time to time by the European Commission or such other supervisory authority;
 - (c) to the extent that the transfer is to a PX group company located outside of the EEA, PX's group of companies has in place Binding Corporate Rules for the transfer of Personal Data to a non-EEA group company, the PX has in place with the non-EEA group company the EU model contractual clauses as set out in Decision 2010/87/EU (or any alternative version of those clauses issued by the European Commission or a supervisory authority from time to time) or an intra-group transfer agreement that provides for the necessary protection of the Customer Personal Data in accordance with Data Protection Law;
 - (d) there is an approved code of conduct in place by an association or other body representing PX or the Customer that applies to the non-EEA territory or territories to which the Customer Personal Data is to be transferred;
 - (e) there is an approved certification mechanism in place in respect of the non-EEA territory; or
 - (f) to the extent that the transfer is to an entity located in the United States, such entity participates in the EU-US Privacy Shield or such other mechanism that may replace or supersede it from time to time.
- 22.6 At the Customer's cost, PX shall allow for a reasonable audit (no more than once per annum) by the Customer and any auditors appointed by it in order for PX to demonstrate its compliance with this Clause 22. For the purposes of such audit, upon reasonable notice, PX shall make available to the Customer and any appointed auditors all information that the Customer deems necessary (acting reasonably) to demonstrate PX's compliance with this Clause 22.
- 22.7 In PX's reasonable opinion, to the extent that it believes that any instruction received by it is likely to infringe the Data Protection Law or any other applicable law, PX shall promptly inform the Customer and shall be entitled to withhold provision of the Payment Express, the Documentation, the Goods, and the Software until the Customer amends its instruction so as not to be infringing.