

# Service Agreement - Merchant PosPay (06/04/2018)

## 1. Purpose

### 1.1

The PosPay Payment System is intended for online payment solutions, adapting and streamlining payment processing for Customers who sell goods, services and/or content on the Internet and other electronic environments and/or conduct trade in store. PayEx developed the PosPay Payment System for processing various types of payment card on the Nordic market. PosPay Payment System forms part of the PayEx infrastructure. Operation and maintenance of the PosPay Payment System is carried out by PayEx in accordance with the conditions set out in Appendix 2, Service Level Agreement.

### 1.2

The Customer will install the PosPay payment solution for debit and credit payment methods at all the Customer's Sales Points in the market relevant to the Customer.

### 1.3

This Service Agreement requires that:

The Customer has entered into an agreement with an Acquirer regarding acquiring of relevant payment methods, and that the agreement remains in force during the period of validity of the Service Agreement.

To avoid misunderstandings, neither the Acquirer, processors nor communications suppliers, e.g. Internet service providers are to be considered as subcontractors to PayEx unless otherwise specified.

## 2. Definitions

Terms used in the Service Agreement shall have the meaning set out in the Framework Agreement, unless otherwise specified in the Service Agreement. Any reference to a law or statutory provision in the Service Agreement shall be considered as including reference to any future changes to said law or provision.

**"Accessories"** – Stands, batteries, cables, etc. that in some way are connected/linked to the Hardware.

**"Acquirer"** – Bank or other third party with which the Customer enters into an agreement for acquiring of card transactions.

**"Document"** – Manuals, user documentation and other applicable material in connection with (i) Payment Application, and (ii) PosPay Client including the documentation PayEx provides to facilitate communication with PayEx and, where applicable, relevant third parties.

**"ECR"** - Electronic Cash Register or Point of Sale system, an application needed to calculate the amount owed by the End Customer, and inventory management at the Sales Point.

**"End Customer"** – the Customer's customer that concludes an agreement at the Sales Point.

**"Hardware"** – Payment terminals covered by the Service Agreement.

**"Party/Partner"** – The Customer and PayEx.

**"PosPay Client"** – Software component provided by PayEx and, where applicable, implemented in the Customer's ECR system, whether it is installed on a local PC, central server, or mobile device (iOS, Android or Windows).

**"PosPay Interface"** – An application programming interface (API) provided by PayEx, and where applicable, implemented by the Customer or its contracted third party, giving the Customer access to the PosPay Server from PayEx.

**"PosPay Server"** - PosPay Server (excluding the Product and PosPay Client) through which the processing of transactions outlined in this Service Agreement is made available. PosPay Server is certified in accordance with PCI DSS.

**"Product"** – The Hardware and Payment Application, either separately or together, including optional Accessories and/or functions as defined in the Ordering form. The use of either standalone, mobile, desktop or unattended Product will be defined in the Ordering form.

**"Rollout"** – Following an approved acceptance test and pilot project, the solution is installed at all sales points in actual service

**"Sales Point"** – Physical store from which the Customer supplies the End Customer with products and services.

**"Payment Application"** – Terminal-embedded software in machine-readable object code (excluding PosPay Client) that is covered by the Product and all later bug fixes and updates provided by PayEx as per the Service Agreement.

**"Payment Application Interface"** – An application programming interface (API) provided by PayEx, and where applicable, implemented by the Customer or its contracted third party, giving the Customer access to the PosPay Server from PayEx.

**"Service"** – Access to the PosPay Server, and/or provision of PosPay Client, and/or provision of the Product, and/or processing of transactions covered by the Service Agreement, and/or PayEx operation and maintenance of the PosPay Payment System.

**"Service Agreement"** – This agreement and the associated appendices.

**"Territory"** – Agreed markets.

## 3. Documents and priority

### 3.1

The following appendices are part of this Service Agreement. The appendices have the following order of priority:

Appendix 1	Areas of responsibility
Appendix 2	Service Level Agreement - SLA
Appendix 3	Product description
Appendix 4	Order form

PayEx is entitled to make necessary changes to the following documents to update with available Products and Services:

- appendix 3 "Product description"
- appendix 4 "Order form"

### 3.2

In the event of this Service Agreement and the Service Agreement Reseller PosPay should contain mutually contradictory terms, the Service Agreement Reseller PosPay shall apply in the first instance.

## 4. Scope of the agreement

PayEx shall supply Services as per this Agreement.

The Customer has a number of Sales Points, each of which provides goods and services. The Customer's aim in entering into the Service Agreement is to ensure a uniform technical infrastructure for all Sales Points.

## 5. Products

### Order

Bulk orders (quantity outlined in Appendix 3, Product Description) for Products should reach PayEx at least twenty (20) weeks before planned delivery, while regular orders per

merchant should reach PayEx three (3) weeks before planned delivery (unless informed otherwise).

#### Delivery

PayEx shall supply Products to the address advised by the Customer (Appendix 4, Ordering form).

The Product are delivered DDP (Incoterms ICC 2010) but with the exception that the Customer shall bear all costs for freight.

#### Activation of customer data

Activation of customer data requires that the Customer submits a correctly completed order form, appendix 4, Ordering form.

### **6. Reserve of right of ownership**

Hardware or/and Accessories remains the property of PayEx until it has been paid for in full. The right of use transfers to the Customer on delivery. If the Customer chooses instead to rent the Hardware or/and Accessories, the right of ownership for the relevant Hardware or/and Accessories remains with PayEx.

### **7. Warranty**

#### **7.1**

PayEx warrants that PayEx shall at its sole discretion promptly decide to repair, replace, credit or reimburse the Customer with the price of any Hardware found to be defective as a result of material defects in workmanship or materials. The warranty requires that the Customer has notified PayEx of the defect without undue delay from the point of delivery and within the warranty period of twelve (12) months from delivery. This warranty does not cover Accessories (except stands) or parts not supplied by PayEx. Nor does it cover faults or defects due to circumstances described in section 15. During the warranty period, defective Hardware will be repaired or replaced (defective Products are to be sent to PayEx in accordance with appendix 2, Service Level Agreement).

#### **7.2**

If the Customer instead chooses to rent Hardware, defective Hardware will be repaired or replaced on the same conditions as for purchased Hardware, without limitation of a warranty period.

#### **7.3**

The Customer shall, at its own risk and expense, deliver the Hardware to PayEx location for repairs. PayEx shall pay the expenses for returning the repaired Hardware to the Customer's advised address.

### **8. The Customer's obligations**

PayEx provision of the Service requires that the Customer fulfils its obligations as per the Service Agreement, including but not limited to:

- (a) ensuring that all the Customer's systems integrated with PosPay Payment System fulfil current PCI SSC requirements at all times as described in more detail at URL [https://www.pcisecuritystandards.org/security\\_standards/](https://www.pcisecuritystandards.org/security_standards/) ;
- (b) strictly follows the procedures described in the PCI PA-DSS Implementation Guide (current version available at URL <http://pim.payex.com/padss/>);
- (c) possessing and maintaining the technology and software required to enable the Customer to conduct sales and that is included in the application area for the Customer's responsibilities as per Appendix 1, Areas of responsibility;

(d) implementing new versions of the Services within thirty (30) days of a written notification from PayEx or within the time agreed by the Parties at any time in accordance with section 12 below;

(e) written information to PayEx of changes to selection of Acquirers, card schemes, or other available functions within the framework of this Agreement;

(f) entering into and maintaining agreement with relevant third parties, e.g. Acquirers and card issuers;

(g) providing customer data required for activation of PosPay, as per Appendix 4, Ordering form;

(h) continuously pay fees to PayEx in accordance with the Framework Agreement Price list; and

(i) if the Customer does not fulfil its obligations as per the Service Agreement, the Customer shall indemnify PayEx with regard to direct costs incurred thereof.

### **9. Availability and Service Level**

The Service is available as described in Appendix 2, Service Level Agreement.

### **10. Installation**

The Customer is responsible for installation of the Service in accordance with PayEx Documents.

### **11. Communication and security**

The Customer is responsible for protecting, without limit, its systems, networks, passwords and relevant parts of the documentation and the Product and PosPay Client against access by unauthorised persons as per written directions and/or instructions supplied to the Customer by PayEx, PCI SSC or Acquirer. PayEx is responsible for ensuring the relevant part of the Service fulfil PCI SSC's security requirements. The Customer guarantees that sufficient security levels will be maintained in all activities undertaken. The Customer also undertakes to inform PayEx immediately if the Customer becomes aware that PCI SSC requirements are not being met and to provide PayEx with information on measures that have been taken to restore PCI DSS-certified status. Data must be transferred in accordance with PayEx instructions at all times, with new instructions being issued as specified in section 12.

### **12. Notices**

Communications between the Parties, except matters defined in the appendix 2 SLA, shall be sent by first class post or e-mail to [sales@payex.com](mailto:sales@payex.com). PayEx will inform the Customer's 1-line Support organisation prior to performing any changes to the PosPay Payment System attributable to PayEx before such changes come into force. In the event of changes to PosPay Payment System demanded by law, official decisions, changes to national or international regulations for payments, changes to third party systems or similar circumstances, the Customer's 1-line Support organisation shall be notified of this without undue delay, if such a change could affect ongoing production and/or the functionality of the Service.

### **13. Duration, termination and effects of termination**

#### **13.1**

Unless expressly stated in Appendix Prices, the following terms shall apply. In the case of purchase of Hardware and Accessories, this Agreement applies on a continuous basis from when it is signed, with a mutual notice period of six (6) months from receipt of written termination, signed by an authorised signatory.

### 13.2

Unless expressly stated in Appendix Prices, the following terms shall apply. In the case of rent of Hardware and Accessories, this Agreement applies for an initial term of thirty-six (36) months from signature ("Agreement Period"), and is subsequently continuously extended by terms of twelve (12) months at a time, assuming notice of termination has not been provided in writing at the latest six (6) months before expiry of the relevant term.

For the rent of Hardware and Accessories, the Customer shall pay fees for minimum thirty-six (36) months from the Hardware and Accessories are dispatched from PayEx premises ("Rental Period"). If the Customer orders additional Hardware and Accessories during the Agreement Period and the Agreement Period is not extended, the Customer shall pay fees for the remaining of the Rental Period.

### 13.3

In the case of termination of this Agreement, the Customer shall return the rented Hardware and Accessories within fourteen (14) days after the Agreement is terminated. If the Customer do not return the rented Hardware and Accessories within the prescribed time, PayEx has the right to invoice the Customer in accordance with the Framework Agreement Price list. The Customer shall bear the expense and risk to return/deliver the Hardware to PayEx advised address.

## 14. Limitations of liability

PayEx is not responsible for discrepancies with warranties or faults or defects in the Service, including but not limited to the Product, as a result of

- (i) the Customer's use and operation of the PosPay Payment System in contravention of the Agreement,
- (ii) the Customer's failure to follow PayEx instructions at any time, including but not limited to failure to update the Product and/or PosPay Client in time;
- (iii) misuse, repairs, adjustment, expansion or changes carried out by the Customer, a representative or third party without the prior written consent of PayEx;
- (iv) installation in an incompatible environment;
- (v) accident, sudden power surge or extreme electro-magnetic field;
- (vi) lightning strike, water damage, fire, burglary;
- (vii) occurrence of one or more of the conditions described in the general terms and conditions of the Framework Agreement, point 12, "force majeure", or
- (viii) faults or defects attributable to the Customer/Sales Point or End Customer.

## 15. Intellectual property rights and liability for damages

### 15.1

Unless otherwise expressly stated, all intellectual property rights, including but not limited to all equipment, software, programs, methods and systems created or supplied by PayEx within the framework of this Agreement belong to PayEx. The Parties agree that nothing prevents PayEx from supplying software or services included in the solution to a third party.

### 15.2

PayEx grants the Customer a non-transferrable, non-exclusive right of use to the Services during the term of the agreement. The right of use only remains in force as long as

the Customer fulfils its obligations to pay fees.

### 15.3

Ownership, copyright, patent rights or other intellectual property rights to systems and programs formulated by a Party or third party, and which have been supplied by the Party, are the property of said Party.

Any amendment to a Party's intellectual property rights within the framework of this Agreement, regardless of whether it occurs through cooperation between the Parties or independently by one Party, remains the property of said Party.

### 15.4

The Parties retain no rights to trademarks or other intellectual property rights of the other Party or any third party as a result of this agreement except as expressly stated below.

### 15.5

The Customer is not entitled to undertake any changes or modification to the Payment Application or the PosPay Client without the consent of PayEx. Each Party is responsible for obtaining all necessary rights to systems, programs and other material supplied by the Party from any third party that holds such rights.

### 15.6

PayEx is obliged, at its own expense, to defend and indemnify the Customer in respect of losses and costs incurred by the Customer as a result of claims that the Service or Product infringes on an outside party's rights, although provided that

- (a) the Customer gives PayEx information about such demands,
- (b) PayEx may solely determine its defence to such a case and conduct negotiations for settlement or arrangement, and
- (c) the Customer provides PayEx with information and assistance to a reasonable extent.

If it should be definitively shown that there has been an infringement, PayEx shall, as far as possible and at its own discretion, ensure that (i) it obtains rights for the Customer to continue to use the Service or Product, or (ii) it replaces or amends the Service or Product in question so that it no longer constitutes an infringement. In the event that PayEx, despite its best efforts, is unable to guarantee the Customer the right to use relevant Services or Products, or to replace or amend them, PayEx shall be entitled to terminate in writing the affected part of the licence according to this Agreement, with a notice period of thirty (30) days.

PayEx is not liable to the Customer for infringement claims based on use of the Services or Products in combination with other equipment or software that is not specified or recommended in writing by PayEx, if the claim could have been avoided without such use;

- (ii) changes to one or more parts of the Services or Products carried out by the Customer or another third party, if the claim could have been avoided without such changes;
- (iii) the Customer's failure to install fixes or updates within the period specified in the Agreement, if the claim could have been avoided without such failure;
- (iv) use of the Services or Products in a way other than that specified in PayEx instructions, if the claim could have been avoided without such use;
- (v) claims that the Services or Products encompass the exercising of protocols that are not owned or supplied by PayEx or PayEx subcontractors, and that constitute an infringement. For the application of this Agreement, a

"protocol" is a formal set of conventions governing the format and control of interaction between communicating functional units that are frequently used within a sector, and may or may not be adopted through a standardisation body. Examples of protocols include Secure Sockets Layer (SSL) and Transport Layer Security (TLS). Section 15 constitutes complete regulation of PayEx responsibilities in the event of infringement claims. To avoid any misunderstandings, it should be noted that infringement claims relating to systems, programs and other material provided by third parties that are not subcontractors to PayEx, including but not limited to Acquirers and processors, are not covered by section 15.