

# **uAccept™ Point of Sale System End User License Agreement**

IMPORTANT: READ THIS END USER LICENSE AGREEMENT (“EULA”) CAREFULLY BEFORE CONTINUING REGISTRATION. BY CLICKING THE “I ACCEPT” BUTTON, YOU SIGNIFY THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO FOLLOW THE TERMS AND CONDITIONS OF THIS EULA, INCLUDING, WITHOUT LIMITATION, THE TERMS AND CONDITIONS OF DOCUMENTS, WHICH ARE INCORPORATED BY REFERENCE HEREIN. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS IN THIS EULA, YOU MUST SELECT THE “I DECLINE” BUTTON AND MAY NOT USE THE UACCEPT PLATFORM.

## **A. Definitions.**

“Order” refers to your agreement to license the uAccept Point of Sale System through our Website.

“Processing Point” refers to “Processing Point, Inc.”

“uAccept” refers to the uAccept Point of Sale System and associated software as a service platform provided by Processing Point.

“You” or “your” refer to any individual or entity ordering or using uAccept.

“Your Data” refers to any data that you input or import into uAccept or is derived from uAccept, including but not limited to information regarding employees, time cards, hours worked, users, departments, or other data.

## **B. Rights Granted.**

Upon Processing Point’s acceptance of your Order and until your Order is canceled or is otherwise terminated, you have the nonexclusive, nonassignable limited right to use uAccept for your internal business operations, subject to the terms of this EULA. You are responsible for your compliance with this EULA. Your rights to use uAccept are subject to this EULA.

You acknowledge that Processing Point has no delivery obligation and will not ship copies of uAccept to you as part of the services. You agree that you do not acquire under the EULA any license to use uAccept in excess of the scope and/or duration of the services, as specified in the

Order. Upon cancellation or termination of your Order, your right to access or use uAccept and the services provided therein shall terminate, subject to the right, for a limited period of time, to obtain a copy of Your Data, as specified herein in Section I.

### **C. Ownership and Restrictions.**

You retain all ownership and intellectual property rights in and to Your Data. Processing Point retains all ownership and intellectual property rights to uAccept and its services. You may not remove or modify any program markings or any notice of Processing Point's proprietary rights from uAccept. You may also not make uAccept or any materials associated with uAccept available in any manner to any third party for use in the third party's business operations. You may also not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of uAccept or access or use uAccept or associated services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to Processing Point.

You may also not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make uAccept or associated materials available to any third party other than as expressly permitted under the terms of the EULA. No part of uAccept may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means. You also agree to make every reasonable effort to prevent unauthorized third parties from accessing uAccept.

### **D. Updates.**

Processing Point may update or enhance uAccept from time to time. You should review any notice of any update and conform to the instructions provided by Processing Point regarding any update.

### **E. Your Data.**

In conjunction with your use of uAccept, Your Data may be input, imported, or derived from uAccept, among other things, to manage employees, track salaries, time, vacations, overtime, attendance, performance or other goals, provide feedback, integrate with other systems maintained by you, establish forecasts, manage employees or workforce, or for other purposes. You are solely responsible for the content of Your Data in whatever forms it is imported, exported, or derived from uAccept. By agreement to this EULA, you attest that you have rights to Your Data and have permission to use Your Data in conjunction with uAccept.

You should not include any “personal information” regarding any individuals in Your Data. “Personal information” includes but is not limited to the following information (as defined in Section 1798.81.5 of the California Civil Code): an individual’s first name or first initial and his or her last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted: (A) Social Security number; (B) driver’s license number or California identification card number; (C) account , credit, or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; and (D) “medical information,” which means any individually identifiable information, in electronic or physical form, regarding the individual’s medical history or medical treatment or diagnosis by a health care professional.

Processing Point treats Your Data as confidential and will not provide access to Your Data to any third party. Processing Point may access Your Data to perform services for support, consulting, or other services to confirm your compliance with this EULA. This may include testing and applying new product or system versions, patches, updates and upgrades, monitoring and testing system use and performance, and resolving bugs and other issues you have reported to Processing Point. Any copies of Your Data created for these purposes are only maintained for time periods relevant to those purposes.

Processing Point may be required to retain or provide access to Your Data to comply with legally mandated reporting, disclosure, or any other legal process requirements.

Processing Point does not use Your Data except as stated above. Through the systems provided, Processing Point may process Your Data but does not control your collection or use practices for Your Data. You control access to Your Data, and any requests or questions related to this data should be directed to you and not Processing Point. You are responsible for providing any notices and/or obtaining any consents necessary for you to input Your Data into uAccept and for Processing Point to access, use, retain, and transfer Your Data as specified in this EULA.

## **F. Security and Breach Notification.**

Processing Point is committed to maintaining the security of the services that it provides, including uAccept, and has in place commercially reasonable physical, administrative, and technical measures designed to prevent unauthorized access to those services. However, we cannot and do not guarantee the complete security of information you provide to us through your use of uAccept, including Your Data.

You are solely responsible for proper backup of Your Data and you must take appropriate measures to protect such data. You are also responsible for any data that is input, derived from, imported to, or exported from uAccept, including to or from any third party applications. Processing Point assumes no liability or responsibility whatsoever if Your Data is lost or corrupted.

If Processing Point determines that Your Data has been misappropriated or wrongly acquired by a third party, Processing Point will promptly report to you such misappropriation or acquisition.

### **G. Warranties, Disclaimers, and Exclusive Remedies**

Processing Point warrants that the services it will perform are in all material respect in accordance with the EULA and the Order. If the services provided to you for any given month during the services term were not performed as warranted, you must provide written notice to Processing Point at the address listed below no later than five (5) business days after the last day of that particular month detailing the nature of the alleged breach of warranty.

PROCESSING POINT DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT PROCESSING POINT WILL CORRECT ALL SERVICE ERRORS. YOU ACKNOWLEDGE THAT PROCESSING POINT DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. PROCESSING POINT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS AND SUCH INTERRUPTIONS DO NOT CONSIST OF A BREACH OF WARRANTY.

PROCESSING POINT DOES NOT GUARANTEE THE PERFORMANCE OR RELIABILITY OF ANY PROGRAMS OR APPLICATIONS THAT ARE RUN BY THIRD PARTIES THAT CONNECT WITH AND/OR LINK TO UACCEPT. YOUR USE OF THESE THIRD PARTY APPLICATIONS OR PROGRAMS IS SUBJECT TO THE TERMS OF USE OF SUCH PROGRAMS AND PROCESSING POINT IS NOT LIABLE FOR YOUR VIOLATION OF SUCH TERMS OF USE. PROCESSING POINT IS ALSO NOT LIABLE FOR ANY EXPORT OF YOUR DATA TO ANY THIRD PARTY PROGRAM OR APPLICATION.

FOR ANY BREACH OF THE ABOVE WARRANTY, PROCESSING POINT WILL REMIT A SERVICES FEE CREDIT TO YOU CALCULATED AT FIVE PERCENT (5%) OF NET MONTHLY FEES FOR THE APPLICABLE SERVICES FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARD ANY OUTSTANDING BALANCE FOR SERVICES OWED TO PROCESSING POINT, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT YOUR EXCLUSIVE REMEDY AND PROCESSING POINT'S SOLE LIABILITY FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT.

TO THE EXTENT NOT PROHIBITED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS, OR ENVIRONMENTS, OR FOR MERCHANTABILITY, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE.

## **H. End of Agreement.**

Services provided under this EULA shall be provided for the period defined in the Order, as renewed by your making ongoing monthly payments specified in the Order, unless early terminated in accordance with the EULA or by your failure to pay such monthly payments. The term of the services and any renewals are collectively defined as the “services term.” At the end of the services term, all rights to access or use the services, including uAccept, shall end. In addition, Processing Point may immediately suspend your password, account, and access to or use of the services (i) if you fail to pay Processing Point, or (ii) if you violate any provision of this EULA and do not cure such violation within thirty (30) days of Processing Point’ initial notice thereof. Any suspension by Processing Point of the services for violation of any provision of the EULA shall not excuse you from your obligation to make payment(s) as agreed in the Order.

Provisions that survive termination or expiration of the EULA are those relating to limitation of liability, payment, and others which by their nature are intended to survive.

## **I. Retrieval of Your Data**

In the event of the termination of the EULA under Paragraph H, Processing Point may permit you to access the services solely to the extent necessary for you to retrieve Your Data then in the services environment. You agree and acknowledge that Processing Point has no obligation to retain Your Data and that Your Data may be irretrievably deleted after 180 days following the termination of the EULA.

## **J. Fees.**

You agree to pay for all services as set forth in the Order. All fees due under this agreement are noncancelable and the sums paid nonrefundable.

## **K. Nondisclosure.**

By virtue of this EULA and uAccept, the parties may have access to information that is confidential to one another. We each agree to disclose only information that is required for the performance of obligations under this agreement. Confidential information shall include Your Data and all information clearly identified as confidential at the time of disclosure.

#### **L. Entire Agreement.**

You agree that the information which is in this EULA and is incorporated into this agreement, including the Order, is the complete agreement for the services ordered by you, and that the agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of this EULA or the Order is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purposes and intent of the agreement. The EULA and the Order may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online by authorized representatives of you and Processing Point.

#### **M. Limitation of Liability.**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE. PROCESSING POINT'S MAXIMUM LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS EULA, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO PROCESSING POINT FOR THE SERVICES UNDER THE ORDER THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE IN YOUR FAVOR AGAINST PROCESSING POINT SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY YOU UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARD THE LIMITATION OF LIABILITY.

#### **N. Other.**

- Processing Point is an independent contractor, and we agree that no partnership, joint venture, or agency relationship exists between us.
- You shall obtain at your sole expense any rights and consents from third parties necessary for Processing Point to perform the services under the agreement and for Your Data.
- The agreement is governed by the substantive and procedural laws of California, and you and Processing Point agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Diego County in California in any dispute arising out of or relating to the agreement.
- If you have a dispute with Processing Point or wish to provide other notice, please provide notice to Processing Point, 2777 Loker Avenue West, Suite A, Carlsbad, California 92010.

- You may not assign the EULA or give or transfer the services described therein or an interest in them to another individual or entity.
- Except for actions for nonpayment or breach of Processing Point's proprietary rights, no action, regardless of form, arising out of or relating to the agreement may be brought by either party more than two (2) years after the cause of action has accrued.

#### **O. Force Majeure.**

Neither of us shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage not caused by the obligated party; government restrictions; or other event outside the reasonable control of the obligated party.

#### **P. Restrictions on Use of the Services.**

You agree not to use or permit use of uAccept that violates applicable laws, ordinances, or regulations. In addition to any other rights afforded to Processing Point under the agreement, Processing Point reserves the right to remove or disable access to any material that violates the foregoing restrictions. Processing Point shall have no liability to you in the event that Processing Point takes such action. You agree to defend and indemnify Processing Point against any claim arising out of a violation of your obligations under this section.

#### **Q. Statistical Information.**

Processing Point may compile statistical information related to the performance of the services, and may make such information publicly available, provided that such information does not incorporate Your Data and/or identify your confidential information or include your company's name. Processing Point retains all intellectual property rights in such information.

#### **R. Third Party Web Sites.**

uAccept may enable you to add links to websites and access to content, references to products and services of third parties, including vendors, users, customers, and other third parties. Processing Point is not responsible for any third party websites or the content related to third parties provided on or through the services and you bear all risks associated with the access to the websites and input of data into uAccept.