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# Commercial Entity Agreement

Last Update: Jan 23, 2016



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## COMMERCIAL ENTITY AGREEMENT FOR CREDIT CARD PROCESSING SERVICES

### HSBC BANK COMMERCIAL ENTITY AGREEMENT FOR CREDIT CARD PROCESSING SERVICES

This Commercial Entity User Agreement for Credit Card Processing Services ("Commercial Entity Agreement" or "CEA") is provided to all PayPal Users that meet the definition of "Commercial Entities" or the equivalent under Association Rules (defined below) and that open and use a Premier or Business Account (such use of such Accounts collectively termed the "Premier/Business Service"). (Each such entity or person receiving this document is hereby referred to as "Merchant"). This CEA constitutes Merchant's separate legally binding contract for credit card processing between (1) Merchant, as a Commercial Entity; (2) (as defined below); and (3) GPUK LLP ("Processor"). Member or Processor may terminate its provision of credit card processing services and enforce or rely on any term or provision of the Merchant's PayPal User Agreement ("PUA"), all of which Member or Processor considers relevant are incorporated in this CEA by reference. In this CEA "we", "us" and "our" refer to Member and Processor together unless, for the purpose of Association Rules or membership, it must mean Member alone. For the purposes of this CEA and the performance of it by the Processor: (i) where Processor and Member are separate entities, (A) the

Processor is the exclusive agent of Member and (B) Member is responsible for the Processor performance of the CEA; (ii) Member must approve, in advance, any fee payable by, or obligation of, the Merchant under the CEA; and (iii) the Processor may not have access, directly or indirectly, to any account for funds or funds due to a Merchant and/or funds withheld from a Merchant for chargebacks arising from, or related to, performance of this CEA.

For the purpose of this CEA, "Member " shall mean (a) GPUK LLP if Merchant is based in Europe; (b) Global Payments Asia-Pacific (Hong Kong) Limited if Merchant is based in Hong Kong; (c) Global Payments Asia-Pacific (Hong Kong Holding) Limited, Singapore Branch if Merchant is based on Singapore; (d) GPC Financial Corporation if Merchant is based in Canada and/or (e) HSBC Bank plc if Merchant is based in Australia. The CEA is also for the benefit of any of the HSBC group of companies other than HSBC Bank plc that provide access to a Bank Identification Number ("BIN") for MasterCard and Visa transactions acquired for the Merchant ("HSBC Companies"), to the extent that the CEA relates to use of that BIN.

Any reference to the PUA shall mean the PayPal User Agreement made between Merchant and PayPal.

By accepting the Commercial Entity Agreement, Merchant agrees to the terms and conditions of this CEA and any documents incorporated by reference. Merchant further agrees that this CEA forms a legally binding contract between Merchant, Processor and Member. Any rights not expressly granted herein are reserved by Member and Processor. Descriptions of material amendments to this CEA will be provided as applicable. Any capitalised terms used in this CEA and not otherwise defined shall have the meanings set forth in the PUA.

## **1. Association Rules**

- 1. Deposit Transactions.** Merchant agrees that it shall only submit card transactions that directly results from bona fide cardholder transactions with that Merchant. Merchant agrees that it will not submit a transaction until Merchant: (i) obtains an authorisation, (ii) completes the transaction, and either: (iii) ships or provides goods, (iv) performs the purchased service, or (v) obtains the cardholder's consent for a recurring transaction.

2. **Anti Money Laundering.** Merchant agrees that it shall not submit a transaction that does not result from a purchase of goods or services between the cardholder and Merchant.
3. **Split Transactions.** Split sales transactions are not allowed. Specifically, Merchant agrees that it will not use two or more sales transaction receipts for a single transaction to avoid or circumvent authorisation limits, or monitoring programs.
4. **Minimum or Maximum.** Merchant agrees that it shall not set minimum or maximum transaction amounts as a condition of honouring Visa and MasterCard cards.
5. **Surcharges.** Merchant agrees that it will not impose surcharges on debit card transactions Subject to any express variations by local law.
6. **Visa and MasterCard Marks.** Merchant is authorised to use the Visa and MasterCard logos or marks only on Merchant's promotional materials and website to indicate that Visa and MasterCard cards are accepted as payment for the business goods and services. Merchant agrees that it shall not use the logos and marks either directly or indirectly, to imply that Visa or MasterCard endorses Merchant's goods or services; nor may Merchant refer to Visa or MasterCard when stating eligibility requirements for purchasing its products, services, or memberships.
7. **Credit Vouchers.** Credit vouchers may not be submitted for non-credit transactions. Merchant agrees that it shall not: (i) accept a payment from a card holder for the purpose of depositing funds to the cardholder's Account, or (ii) process a credit transaction without having completed a previous debit transaction with the same cardholder.
8. **Cash Disbursements.** Merchant agrees that if it sells travellers cheques or foreign currency that Disbursements shall be limited to the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions. Merchant agrees that under no circumstances shall a Visa or MasterCard transaction represent collection of a dishonoured cheque.
9. **Authorisation Requirements.** Merchant agrees to obtain an authorisation for all transaction amounts.
10. **Discrimination.** Merchant agrees that it shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favour of any other acceptance brand.

11. **Present Transactions within 30 Business Days.** Merchant agrees that a debit transaction shall not be presented until after the goods are shipped, or services provided, unless, at the time of the transaction, the cardholder agrees to a properly disclosed delayed delivery of the goods or services. Merchant agrees that when it receives authorisation for delayed presentment, the words "Delayed Presentment" or something substantially similar must be disclosed to the cardholder.
12. **Fraudulent or Unauthorised Use of Account Information Prohibited.** Merchant agrees that it shall not request or use Visa or MasterCard Account number information for any purpose that it knows or should have known to be fraudulent or in violation of Visa and MasterCard standards, Association Rules, the PUA, or this CEA, or for any purpose that the cardholder did not authorise.
13. **Merchant Identification.** Merchant agrees to prominently and unequivocally inform the cardholder of the identity of the Merchant at all points of interaction so that the cardholder readily can identify the transaction.

## 2. **Card Associations**

Visa Europe Ltd, Visa U.S.A., Inc. and Visa International ("Visa") and MasterCard International Incorporated ("MasterCard") (the "Associations") have developed rules and regulations (the "Association Rules") that govern their member banks and merchants in the procedures, responsibilities and allocation of risk for payments made through the Associations. By accepting this CEA, Merchant is agreeing to comply with all such Association Rules.

## 3. **Merchant's Refund Policy must be on Merchant's Website.**

If Merchant limits refund/exchange terms or other specific conditions for Card sales, Merchant's POLICY MUST BE CLEARLY PROVIDED TO THE CARDHOLDER PRIOR TO THE SALE AND AS PART OF YOUR SALE CONFIRMATION PROCESS. PROPER DISCLOSURE WOULD INCLUDE WORDING THAT IS PROMINANTLY DISPLAYED AND STATES "NO REFUND, EXCHANGE ONLY", OR SOMETHING SUBSTANTIALLY SIMILAR AND INCLUDES ANY SPECIAL TERMS. NOTE: QUALIFYING YOUR REFUND OR EXCHANGE TERMS DOES NOT COMPLETELY ELIMINATE YOUR liability for a refund because consumer protection laws and Association Rules frequently allow the cardholder to still dispute these items. In particular, by implementing Directive 97/7/EC many European Union member states will have distance selling regulations which allow a

consumer to cancel its contract with the Merchant within a defined period and receive a refund.

4. **Term and Termination.** This CEA is effective upon the date Merchant accepts the terms and conditions set out herein and continues so long as Merchant uses the PayPal Service (“Services”) or until terminated by Merchant, Processor or Member, provided that those terms which by their nature are intended to survive termination (including without limitation, indemnification and chargeback obligations and limitations of liability) shall so survive termination. This CEA may be terminated by Member or Processor at any time based on a breach of any of Merchant’s obligations hereunder or for any other reason that Member or Processor deem exceptional. This CEA will terminate automatically upon any termination of Merchant’s PUA.
5. **Indemnification.** Merchant agrees to indemnify, defend, and hold Member and Processor harmless from and against all losses, liabilities, damages and expenses (including legal fees and collection costs) which the Member, Processor and/or their affiliates or agents may suffer or incur arising from any breach of any warranty, covenant or misrepresentation by Merchant under this CEA, or arising as a result of any tortious conduct by Merchant or Merchant’s employees or agents, in connection with Card transactions or otherwise arising from Merchant’s provision of goods and services to cardholders or from any contravention of any legal requirements.
6. **Arbitration.** Any dispute with respect to this CEA between Merchant, Processor and/or Member, including a dispute as to the validity or existence of this CEA and/or this clause, shall be resolved by arbitration in London, England, conducted in English by a single arbitrator in accordance with the ICC Rules. The parties agree to waive any right of appeal against the arbitration award. In the event of a failure by the parties to agree on the sole arbitrator within 30 days of one party calling upon the other to do so, one shall be appointed by the ICC.
7. **Assignment/Amendments.** This CEA may not be assigned by Merchant without the prior written consent of Member and Processor. Member may assign their rights under this CEA without Merchant’s consent and subject to the Association Rules. The Processor may not subcontract, sublicense, assign, license, franchise, or in any manner extend or transfer to any third party, any right or obligation of the Processor set forth in the CEA.

This CEA may be amended by Member as provided under the PUA, and otherwise shall not be modified in any respect without the express written agreement of the Member.

8. **Warranty disclaimer.** This CEA is a service agreement. We disclaim all representations or warranties, express or implied, made to merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.
9. **Logo usage.** In using each other's logos and other trademarks, each agrees to follow the guidelines prescribed by the other, as notified by the parties to each other from time to time.
10. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall the parties hereunder, or their affiliates or any of their respective directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.  
Notwithstanding anything in this CEA to the contrary, in no event shall we be liable or responsible for any delays or errors in our performance of the services caused by our service providers or other parties or events outside of our reasonable control, including PayPal. Notwithstanding anything in this CEA to the contrary, the parties' cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this CEA) and regardless of the form of action or legal theory and whether or not arising in contract or tort (excluding negligence and wilful misconduct) shall not exceed the total volume of all transactions, expressed as a U.S. dollar amount, processed under this CEA. Nothing in this CEA shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.
11. **Enforceability.** No term of this CEA shall be enforceable by a third party (other than the HSBC Companies) and in particular a person who is not a party to this CEA has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy any of the benefits of this CEA (being a person other than the parties, the HSBC Companies and their permitted successors and assignees).
12. **Governing Law.** Governing law with respect to this CEA shall be the laws of England and Wales. Each party hereby submits to the non-exclusive jurisdiction of the courts of England and Wales.

13. **Waiver.** The failure of a party to assert any of its rights under this CEA, including, but not limited to, the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
14. **Relationship between the Parties.** No Partnership or Agency; Independent Contractors. No agency, partnership, joint venture or employment relationship is created between Merchant, Processor and/or Member by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Nothing in this CEA will be construed to constitute either party as the agent for the other for any purpose whatsoever. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.
15. **No Illegal Use of Services.** Merchant will not access and/or utilise the Services for illegal purposes and will not interfere or disrupt networks connected with the Services.
16. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.

## COMMERCIAL ENTITY AGREEMENT FOR PAYPAL PAYMENT CARD FUNDED PROCESSING SERVICES

**Note: The agreement below replaces an earlier, similar agreement with NatWest (National Westminster Bank PLC).**

This Commercial Entity User Agreement for PayPal Payment Card Funded Processing Services ("Commercial Entity Agreement" or "CEA") is provided to all PayPal Users that are Commercial Entities (as defined by Visa Europe, Visa Inc, Visa International, MasterCard Worldwide, UK Maestro, Solo and/or International

Maestro (together the "Associations")) and open a Premier or Business Account (such use of such accounts collectively termed the "Premier/Business Service"). Each such PayPal User is hereby referred to as "Merchant" and may be referred to herein as "you" and/or "your". This CEA constitutes your separate legally binding contract for credit and debit card processing for PayPal transactions between you and the WorldPay Entity (as defined below) and its Affiliate(s)(collectively, the "Acquirer").

For the purpose of this CEA, "WorldPay Entity" shall mean (a) WorldPay (UK) Limited if Merchant is based in Europe; and/or (b) The Royal Bank of Scotland PLC if Merchant is based in Singapore and/or Hong Kong; and/or (c) The Royal Bank of Scotland PLC if Merchant is based in the United States and/or (d) Worldpay PTY Ltd if Merchant is based in Australia.

For the purpose of this CEA, "Affiliate(s)" shall mean the financial institution(s) domiciled in the same Association region as you are domiciled in for Association purposes and which Acquirer has formed a relationship with in accordance with Association requirements to allow the processing of card transactions the identity of which you can obtain on contacting PayPal. In accordance with the provisions of this CEA, Acquirer may terminate its provision of credit and debit card processing services and enforce any of the provisions of Merchant's PayPal Payment Processing Agreement (also known as the PayPal User Agreement) ("PPA"), agreed by and between Merchant and PayPal. In this CEA "we", "us" and "our" refer to Acquirer.

Merchant agrees to the terms and conditions of this CEA. Merchant further agrees that this CEA forms a legally binding contract between Merchant and Acquirer. This Commercial Entity Agreement may be amended at any time by us via PayPal posting a revised version of the CEA on the PayPal website(s). The revised version will be effective at the time PayPal posts it. If we propose to change this CEA in a substantial manner, we will provide you with at least 30 days' prior notice of such a change by posting notice on the "Policy Updates" page of PayPal's web site(s). After this 30 days' notice, you will be considered as having expressly consented to all amendments to the CEA. If you disagree with those proposed amendments, you may close your account before the expiry of such 30 day period in accordance with the terms of the PPA and this CEA will terminate on the closure of your account. For the purpose of the CEA a change



to this CEA will be considered to be made in a “substantial manner” if the change involves a reduction to your rights or increases your responsibilities.

1. **Purpose of this CEA.** When your customers pay you through PayPal, they have the option of paying you through a funding source offered on the PayPal website including a card funded payment. In most instances, you will not know the funding source that your customer selected. Since you may be the recipient of a card funded payment, the Associations require that you enter into a direct contractual relationship with a bank who is a member of the Associations. By entering into this CEA, you are fulfilling such Association requirement and you are agreeing to comply with Association rules as they pertain to payments you receive through the PayPal service.
2. **Association Rules.**
  1. **Deposit Transactions.** Merchant agrees that it shall only accept payments through PayPal Processing Services for bona fide transactions between the Merchant and its customer for the sale of goods or services. Merchant shall not submit a transaction for the refinance or transfer of an existing obligation that was uncollectible. Merchant acknowledges that for Visa and MasterCard payments, PayPal shall obtain an authorization for transaction amounts prior to completing the transaction.
  2. **Split Transactions.** Merchant agrees to submit a single transaction for the full amount of each sale. Except, however in an instance where the Merchant and cardholder agree on a partial shipment of product, or where the transaction qualifies for delayed delivery or special order deposits (such as partial shipments based on inventory on hand), a sale may be split into multiple transactions.
  3. **Minimum or Maximum/Surcharges.** Merchant agrees that it shall not set minimum or maximum transaction amounts or impose surcharges as a condition of honouring Visa and MasterCard cards, unless otherwise permitted in the particular jurisdiction of a transaction.
  4. **Visa and MasterCard Marks.** Merchant is authorized to use the Visa and MasterCard logos or marks only on Merchant’s promotional materials and website to indicate that Visa and MasterCard cards are accepted as funding sources for PayPal transactions.
  5. **Credit Vouchers.** Credit vouchers may only be submitted for the purpose of refunding a prior transaction from the same card.
  6. **Cash Disbursements.** Merchant agrees that if it sells travelers cheques or foreign currency that disbursements shall be limited to

the value of cheques, Visa TravelMoney, or currency sold in a single transaction, plus any applicable commissions.

7. **Discrimination.** Merchant agrees that it shall not engage in any acceptance practice that discriminates against or discourages the use of Visa or MasterCard in favour of any other card brand.
8. **Access to Cardholder Data.** Merchant acknowledges that it does not have access to Cardholder Data (defined as the cardholder's account number, expiration date, and CVV2) and will not request access to Cardholder Data from either PayPal or the cardholder. In the event that Merchant receives Cardholder Data in connection with the PayPal Processing Services provided under this Agreement, Merchant agrees that it will not use the Cardholder Data for any purpose that it knows or should know to be fraudulent or in violation of any Association Rules. Merchant also agrees that it will not sell, purchase, provide or exchange in any manner or disclose Cardholder Data to anyone other than its acquirer, Visa or MasterCard (as applicable) or in response to a government request. In the event that Merchant receives Cardholder Data, it will promptly notify Acquirer and PayPal of such.
9. **Merchant Identification.** Merchant agrees to prominently and unequivocally inform the cardholder of the identity of the Merchant at all points of interaction.
10. **Chargebacks.** Merchant shall use all reasonable methods to resolve disputes with the cardholder. Should a chargeback dispute occur, Merchant shall promptly comply with all requests for information from PayPal. Merchant shall not attempt to recharge a cardholder for an item that has been charged back to the cardholder, unless the cardholder has authorized such actions.
3. **Merchant's Refund Policy must be on Merchant's Website.** If Merchant limits refund/exchange terms or other specific conditions for Card sales, Merchant's policy must be clearly provided to the cardholder prior to the sale and Merchant must conform with all applicable laws and the Association Rules.
4. **Term and Termination.** This CEA is effective upon the date Merchant agrees to the CEA and continues so long as the PPA remains in force between Merchant and PayPal but shall automatically terminate without notice on termination of such PPA for any reason, provided that those terms which by their nature are intended to survive termination (including without limitation, indemnification obligations and limitations of liability) shall survive. This CEA may be terminated by Acquirer at any time based on a breach of any of Merchant's obligations under this CEA or the PPA, or

by Merchant based on a breach of any of Acquirer's obligations under this CEA, or by Acquirer based on the termination of the acquiring services agreement entered into between PayPal (or its applicable group company) and Acquirer as notified to the Merchant.

5. **Indemnification.** Merchant agrees to indemnify and hold Acquirer harmless from and against all losses, liabilities, damages and expense: (a) resulting from any breach of any warranty, covenant or agreement or any misrepresentation by Merchant under this CEA; (b) arising out of Merchant's or its employees' negligence or willful misconduct, (c) arising in connection with Card transactions or otherwise arising from Merchant's provision of goods and services to Cardholders or customers; (d) arising out of Merchant's use of the PayPal Service; or (e) resulting from any Fines or arising out of any third party indemnifications Acquirer is obligated to make as a result of Merchant's actions (including indemnification of any Association or Issuing Bank).
6. **Assignment/Amendments.** This CEA may not be assigned by Merchant without the prior written consent of Acquirer. Acquirer may assign its rights under this CEA without Merchant's consent.
7. **Warranty Disclaimer.** This CEA is a service agreement. Acquirer disclaims all representations or warranties, express or implied, made to Merchant or any other person, including without limitation, any warranties regarding quality, suitability, merchantability, fitness for a particular purpose or otherwise of any services or any goods provided incidental to the services provided under this CEA to the extent permitted by law.
8. **Limitation of Liability.** Notwithstanding anything in this CEA to the contrary, in no event shall Acquirer, or its Affiliate(s) or any of its directors, officers, employees, agents or subcontractors, be liable under any theory of tort, contract, strict liability or other legal theory for lost profits, lost revenues, lost business opportunities, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether Acquirer has been advised of the possibility of such damages. Notwithstanding anything in this CEA to the contrary, in no event shall Acquirer be liable or responsible for any delays or errors in its performance of the services caused by our service providers or other parties or events outside of Acquirer's reasonable control, including PayPal. Notwithstanding anything in this CEA to the contrary, Acquirer's cumulative liability for all losses, claims, suits, controversies, breaches or damages for any cause whatsoever arising out of or related to this CEA and regardless of the form of action or legal theory and whether or not arising in contract or tort (including negligence shall not exceed the

total volume of all transactions, expressed as a U.S. dollar amount processed by the Merchant under this CEA via PayPal. Nothing in this CEA shall exclude or limit any liability of any party for death or personal injury caused by negligence or fraud, deceit or fraudulent misrepresentation, howsoever caused.

9. **Waiver.** The failure of a party to assert any of its rights under this CEA, including, but not limited to, the right to terminate this CEA in the event of breach or default by the other party, will not be deemed to constitute a waiver by that party of its right to enforce each and every provision of this CEA in accordance with its terms.
10. **Relationship between the Parties.** No agency, partnership, joint venture or employment relationship is created between Merchant and Acquirer by way of this CEA. In the performance of their respective obligations hereunder, the parties are, and will be, independent contractors. Nothing in this CEA will be construed to constitute either party as the agent for the other for any purpose whatsoever. Neither party will bind, or attempt to bind, the other party to any contract or the performance of any obligation, and neither party will represent to any third party that it has any right to enter into any binding obligation on the other party's behalf.
11. **No Illegal Use of Services.** Merchant will not access and/or utilize the Services for illegal purposes and will not interfere or disrupt networks connected with the Services.
12. **Severability.** Whenever possible, each provision of this CEA will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof will be prohibited by or determined to be invalid by a court of competent jurisdiction, such provision will be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this CEA.
13. **Governing Law.** This CEA (and the relationships referred to or contemplated by it) shall be governed and construed in accordance with the laws as set out as the governing laws of the PPA which the Merchant has agreed to.