

## X-Payments Hosted terms of use

Rev. date: Jan 23, 2023

Your use of X-Payments hosted solution is subject at all times to these Terms of Use (the “Terms of Use”), as well as the Privacy Policy (the “Privacy Policy”) and the Moneyback Policy (the “Moneyback Policy”), which together constitute an agreement (the “Agreement”) between you and X-Cart Holdings LLC (“Service Provider”) regarding your use of the payment processing management and hosted security application offered by X-Cart Holdings LLC.

# 1. The Service and your acceptance of the Terms

## 1.1. Description of the X-Payments Application

Service Provider provides its web-based payment processing management and hosted security application (the “X-Payments Application”) as a service, through its website found at <https://www.x-payments.com>. We may update, improve, or extend the X-Payments Application from time to time, and it may include online training or e-learning modules, user manuals, guides or other written informational material, which we also make available to you from time to time through our website. The term “we” means X-Cart Holdings LLC, which owns and provides the X-Payments Application.

## 1.2. PCI DSS compliancen

Service Provider will comply with PCI DSS requirements and regulations.

## 1.3. Accepting the Terms of Use and Establishing an Account

You accept these Terms of Use and agree to be bound by this Agreement (i) by clicking on the “I accept” box at the time you create a username and password; (ii) by browsing the information available on our website; or (iii) by beginning to use the X-Payments Application, whichever occurs first. The terms “your” and “you” (and related words) mean any person or business entity who accesses the Service Provider website or who seeks to use the X-Payments Application through our website. If you wish to use the X-Payments Application, you must create a unique user account on the sign-up page on our website, which you can find from a link on our home page at <https://www.x-payments.com>. If you create an account on behalf of a company or entity, you represent that you are authorized to act on behalf of that company or entity.

# 2. Service Level

## 2.1 Network Availability

a) Objective:

Service Provider aims to achieve 100% Web Site Availability for all customers.

b) Remedy:

Except under the conditions mentioned in the next section below, if the Web Site Availability of customer's Web site is less than 100%, Provider will issue a credit to customer according to the following table:

Web Site Availability	Total Downtime in a 30 days calendar month	Credit Percentage
99.9 to 100%	0 to 43.2 minutes	0%
98% to 99.8%	43.2 mins to 14 hrs 24 mins	10%
95% to 97.9%	14 hrs 24 mins to 36 hrs	25%
90% to 94.9%	36 hrs to 72 hrs	50%
89.9% or below	more than 72 hrs	100%

The credit will be calculated based on the monthly service charge for the affected Services.

## 3. Payment for Services

### 3.1 Fees

You shall pay the fees set forth for the Software license and Services purchased by You in accordance with Service Provider's Pricing which is available at <https://www.x-payments.com/pricing> that is incorporated into this Agreement by reference. Service Provider may change its Pricing and the fees for its Services from time to time. Service Provider's changes to the policy are effective after Service Provider provides You with at least fourteen (14) days' notice of the changes by posting the changes on the X-Payments Site.

### 3.2 Payment terms

Service Provider will invoice You once a month, and all payments are due within five (5) days after Service Provider submits its invoice. If You fail to pay in full by the tenth (10) day after Service Provider submits its invoice Your Account may be suspended or terminated under Section 12.2 of this Agreement, but any suspension does not relieve You from the obligation to pay all fees due to Service Provider, including the monthly charge.

### 3.3 Taxes

All fees under this Agreement exclude all applicable sales, use, and other taxes and government charges, whether federal, state or foreign, and You will be responsible for payment of all such taxes (other than taxes based on Service Provider's income), fees, duties, and charges, and any related penalties and interest, arising from the payment of any and all fees under this Agreement including the access to or license of the Software and performance of the Services hereunder.

## 4. Access to the X-Payments Application

### 4.1 Access to X-Payments Application through Designated URL

We will make the X-Payments Application accessible from a URL you have selected through our signup page, in the form of <https://www.x-payments.com> (the “Application URL”). Your selection of an Application URL is subject to our review and acceptance, and we reserve the right to reject a requested Application URL for any reason, including but not limited to the reason that such requested URL has already been selected or is too similar to an Application URL already selected by another Service Provider user. You agree not to access or attempt to access the X-Payments Application by any means other than through the Application URL.

## **4.2 Interruptions of Service**

The X-Payments Application may be unavailable when we may make periodic upgrades or perform scheduled maintenance. We will use reasonable efforts to alert Authorized Users to scheduled upgrade or maintenance interruptions, but we make no warranties or guarantees of continuous or uninterrupted service.

## **4.3 Control of Access**

You agree to keep confidential and not disclose to any third parties any usernames, passwords and account numbers associated with the X-Payments Application. You shall promptly notify us if you learn of a security breach related to your account, or if a username or password associated with your account is compromised in any way.

## **4.4 No Interference**

You will not attempt to gain access to any portion of our systems or networks in any way that is not necessary for you to use the X-Payments Application. Thus, by way of example but without limitation:

- (a) You may not access, attempt to access, or use the account or data of any Service Provider account (or any portion of that account or data) if you are not an Authorized User with respect to that account.
- (b) You may not access or use the X-Payments Application from any unauthorized software or network, or attempt to modify or reroute the X-Payments Application or combine it with any other software, product, service, or system.
- (c) You may not provide any of Service Provider’s competitors with access of any kind to the X-Payments Application.
- (d) You may not copy, modify, distribute, or publicly display any portion of the X-Payments Application or its underlying software.
- (e) You may not license, rent, lease, sell, transfer, assign, distribute, display, host, outsource, or otherwise commercially exploit or make available the X-Payments Application, including on a time-share, service-bureau, or similar basis, to any third party other than an Authorized User.
- (f) You may not create Internet links to the X-Payments Application which include log-in information (including but not limited to usernames, passwords, and secure cookies), or “mirror” or “frame” any part of the X-Payments Application without our consent.

(g) You may not make any efforts to reverse engineer or reverse compile the X-Payments Application or underlying software or otherwise attempt to derive any source code, algorithms, program structure, or other trade-secret information therefrom, or allow any third party to do so, except to the extent such a restriction is expressly prohibited under applicable local law.

(h) You may not use any robot, spider, scraper, deep link or similar automated data gathering algorithm, tools, methodology or system to access, copy, monitor, the X-Payments Application or the Service Provider website without our express written consent.

(i) You may not use any engine, software, tool, mechanism, algorithm, agent or device, including but not limited to robots, spiders, intelligent agents, to search or access the Service Provider.com website except for a generally available third-party web browser application such as Internet Explorer, Firefox and Safari.

(j) You may not post or transmit to any Service Provider.com website any files containing viruses, worms, or other contaminating or destructive elements or otherwise seek to interfere with the operation of the X-Payments Application.

## **5. Permitted Use and Restrictions on Use**

### **5.1 Permitted Use**

You and all your Authorized Users may use the X-Payments Application only for the purpose of sales, customer management, ecommerce, reporting and management activities related to your own business, in accordance with all the terms and conditions of this Agreement. You agree that each of your Authorized Users similarly will abide by all restrictions on use set forth in this Section 5 and all other terms and conditions of this Agreement. You may begin using the X-Payments Application as soon as we have approved the username, password and Application URL you have selected and you and your Authorized Users may continue using it as long as the X-Payments Application may be made available to Authorized Users, subject to the restrictions on use set and all additional terms and conditions of this Agreement.

### **5.2 No Wrongful Use**

You agree to use the X-Payments Application only for authorized, legal and ethical purposes, consistent with all applicable laws, regulations, and the rights of others, and only for the permitted use described above. You may not use the X-Payments Application in any manner that harms, or is likely to harm, Service Provider, or any of our subscribers, suppliers, affiliates, resellers, or other business partners. Without limiting the foregoing, you are specifically prohibited from using the X-Payments Application:

(a) To damage, disable, overburden or impair our service (or the networks connected to our service) or to interfere with anyone's authorized use of the X-Payments Application;

(b) To engage in or further any fraudulent, deceptive, or otherwise unlawful practices, including but not limited to tax evasion, money laundering or the conduct of any business for which you have not obtained all necessary licenses, permits and other approvals;

- (c) To engage in any activities that violate or infringe upon the rights of any third party (including but not limited to intellectual property rights, publicity rights and privacy rights);
- (d) To promote or support violent or threatening actions; illegal or harmful activities, substances, goods or services; or discrimination based on race, gender, religion, nationality, disability, sexual orientation, or age;
- (e) To transmit any bulk unsolicited commercial communications;
- (f) To engage in communications with any obscene, offensive, defamatory, slanderous, libelous or hateful material or themes.
- (g) In circumstances where system unavailability, errors, or other anomalies could result in property damage, bodily injury or death.

### **5.3 Right to limit**

X-Payments reserves the right to limit your account's CPU performance and bandwidth or temporary suspend your account in cases where it is necessary to prevent negatively impacting other X-Payments accounts.

## **6. Disclaimer of Warranties; Limitation of Liabilities.**

### **6.1 Disclaimer of Warranties**

THE X-PAYMENTS APPLICATION IS PROVIDED ON AN "AS IS" "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, SERVICE PROVIDER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE X-PAYMENTS APPLICATION WILL BE FREE FROM ERRORS, DELAYS OR INTERRUPTIONS, THAT ALL ERRORS WILL BE CORRECTED, OR THAT THE X-PAYMENTS APPLICATION WILL MEET YOUR REQUIREMENTS. WE MAY UPDATE, IMPROVE, OR OTHERWISE MODIFY THE X-PAYMENTS APPLICATION (OR ANY OF ITS INDIVIDUAL FEATURES OR FUNCTIONALITIES) AT ANY TIME AS WE SEE FIT IN OUR SOLE DISCRETION. SERVICE PROVIDER IS NOT RESPONSIBLE FOR DELAYS CAUSED BY ACCIDENT, WAR, ACT OF GOD, EMBARGO, COMPUTER SYSTEM FAILURE, OR ANY OTHER CIRCUMSTANCE BEYOND ITS CONTROL WHATSOEVER

### **6.2 Disclaimer of Warranties or Representation Regarding Legal or Accounting Compliance and Similar Matters.**

SERVICE PROVIDER AND ITS SUPPLIERS ARE NOT ENGAGED IN RENDERING LEGAL, ACCOUNTING OR OTHER PROFESSIONAL SERVICES. IF LEGAL OR ACCOUNTING ADVICE OR OTHER EXPERT ASSISTANCE IS REQUIRED, YOU SHOULD SEEK THE SERVICES OF A COMPETENT PROFESSIONAL. WE EXPRESSLY DISCLAIM ANY REPRESENTATIONS OR WARRANTIES THAT YOUR

USE OF THE X-Payments Application WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS OR WILL OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LOCAL, STATE, FEDERAL, NATIONAL OR INTERNATIONAL LAWS OR REGULATIONS (COLLECTIVELY, “APPLICABLE LAWS”). YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT YOUR USE OF THE X-PAYMENTS IS IN ACCORDANCE WITH APPLICABLE LAWS. IT IS YOUR RESPONSIBILITY TO BE AND REMAIN INFORMED REGARDING ALL APPLICABLE LAWS AND ACCOUNTING AND OTHER PRACTICES THAT AFFECT YOUR BUSINESS.

### **6.3 Disclaimer of Warranty of Continuous Operation**

You acknowledge that the X-Payments Application may be inaccessible, unavailable or inoperable from time to time for any reason whatsoever, including but not limited to: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs that Service Provider may undertake from time to time; or (iii) causes beyond the control of Service Provider or that are not reasonably foreseeable by Service Provider, including without limitation, interruption or failure of telecommunication or digital transmission links, hostile network attacks, the unavailability, operation or inaccessibility of websites or interfaces, network congestion, or other failures. You further acknowledge and agree that (i) We have no control over the availability of the X-Payments Application on a continuous or uninterrupted basis; (ii) We are not responsible for the functionality of any third-party website, interface, or link; (iii) The terms of this Agreement are subject to the limitations of our hardware, software and bandwidth; and (iv) Our failure to make the X-Payments Application available because of technical difficulties or for any reason out of our control does not amount to a failure to meet the obligations or result in a breach by Service Provider of this Agreement, and you expressly waive all right to dispute such failure.

### **6.4 No Responsibility for User Communications**

We have no obligation to monitor or police communications or data transmitted through the X-Payments Application and we will not be responsible for the content of any such communications or transmissions. You are responsible for the content of any communications and data that you transmit, upload or post through the X-Payments Application.

### **6.5 Limitation on Disclaimer of Warranties**

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES IN CERTAIN CIRCUMSTANCES. ACCORDINGLY, SOME OF THE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU

### **6.6 Limitation of Liability**

UNDER NO CIRCUMSTANCES SHALL SERVICE PROVIDER BE LIABLE TO YOU FOR ANY PUNITIVE, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES OR LOSSES, COSTS OR EXPENSES INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR INTERRUPTION OF BUSINESS (EVEN IF SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING FROM ANY ASPECT OF THE RELATIONSHIP PROVIDED

HEREIN. IN NO EVENT SHALL THE TOTAL OBLIGATIONS OR LIABILITY OF SERVICE PROVIDER HEREUNDER EXCEED \$100. REGARDLESS OF ANY LAW TO THE CONTRARY, NO ACTION, SUIT OR PROCEEDING SHALL BE BROUGHT AGAINST SERVICE PROVIDER MORE THAN ONE YEAR AFTER THE DATE UPON WHICH THE CLAIM AROSE.

## **7. Additional Authorized User Responsibilities.**

### **7.1 Internet Connectivity**

In order to use the X-Payments Application you will need Internet connectivity, a web browser and a security socket layer (SSL) certificate for at least 128 bit encryption. You will be solely responsible for acquiring and maintaining all telecommunications and Internet services and other hardware and software required to access and use the X-Payments Application, including, without limitation, any and all costs, fees, expenses and taxes of any kind relating to the foregoing.

### **7.2 Accuracy of Registration Data, Cooperation, Assistance**

You understand that our ability to provide the X-Payments Application depends in part on the information and cooperation that we receive from you. Accordingly, you agree promptly to update Registration Data as necessary to keep it accurate, current and complete at all times. In addition, you agree to provide us with such information and cooperation as we may reasonably require in performing our duties under this Agreement.

### **7.3 Username and Password Control; Notification**

Our ability to provide the X-Payments Application to you depends on the integrity and your proper use of your account. Accordingly, you agree that: (i) you will not allow access to or use of the X-Payments Application (or any portion thereof) by anyone other than Authorized Users or for any purpose prohibited under this Agreement; (ii) you will ensure that all Authorized Users comply with the terms and conditions of this Agreement; and (iii) you will be responsible for any violation of this Agreement by any Authorized User, and for any unauthorized use of the usernames, passwords, or other security credentials associated with your account. You further agree to notify us promptly if you become aware of any loss or theft or unauthorized use of any of your passwords, usernames, and/or account number, or of any other suspected or alleged violation of this Agreement, and you will cooperate with us in any investigation or enforcement efforts. In addition, you agree to maintain current and accurate information regarding the identity of each Authorized User (and their corresponding username and password), and you agree to make that information available to us upon request for purposes of enabling us to provide the X-Payments Application and to enforce the terms of this Agreement. Without limiting any of our other rights and remedies, we may suspend or terminate any Authorized User's access to the X-Payments Application upon notice to you in the event we determine that the Authorized User has violated the terms of this Agreement. We will communicate with you by email to the email address you provide. It is your responsibility to update or modify that email address as may be needed so that communications may be sent to you.

## **8. Ownership Rights**

## **8.1 Your User Data**

When you use the X-Payments Application, you will be providing us with information, accounts, data, and other information and materials pertaining to your business (referred to here as your “User Data”). We acknowledge that your User Data belongs to you. When you submit any User Data to Service Provider, you represent that you have all necessary rights in and to that User Data and you hereby grant us a license to use your User Data, solely for the purpose of making the X-Payments Application available to you and your Authorized Users.

## **8.2 Service Provider Ownership and Intellectual Property Rights**

(a) The X-Payments Application, the software and other resources used to provide the X-Payments Application (and all copies of such software or other resources), and all associated intellectual property rights belong exclusively to Service Provider, and its licensors (the “Service Provider Property”). Nothing in this Agreement gives you any rights with respect to the Service Provider Property except for the access and usage rights expressly granted above.

(b) Except as permitted by this Agreement, neither the Service Provider Property nor any materials, assistance, instructions, or information that we provide in relation to any Service Provider Property (whether provided verbally, in writing, electronically or otherwise), may be copied, reproduced, modified, distributed, republished, displayed, posted, or transmitted in any form or by any means, in whole or in part, nor may you make any efforts to derive any source code, algorithms, program structure, or other trade-secret information therefrom, or allow any third party to do so, except to the extent such a restriction is expressly prohibited under applicable law.

(c) Nothing in this Agreement limits any rights that we may have under any trade secret, copyright, patent or other laws. Without limiting the foregoing, we will have the right to specific performance with respect to your obligations under this Section 7.

## **9. License to Use Feedback-related Content**

We may provide you with a mechanism to provide feedback, suggestions, and ideas about our products and services (“Feedback”). You agree that we may, in our sole discretion, use the Feedback you provide us in any way, including in future modifications of the X-Payments Application and in any multimedia works and/or advertising and promotional materials relating thereto. When you submit any Feedback to Service Provider you may not post or transmit any message that is defamatory or libelous, or which discloses private or confidential information of any third party. You may not post or transmit any message or information that is obscene, pornographic, harassing, hateful, threatening, abusive, racially or ethnically offensive, or that encourages conduct that would be a criminal offense or other confidential or proprietary information of third parties that you do not have authorization to post or transmit. You hereby grant us a perpetual worldwide fully transferable non-revocable royalty-free license to use, reproduce, modify, create derivative works from, distribute, display and commercialize any materials, information and ideas you provide to us in the Feedback. We agree not to disclose your identity as the source of the Feedback other than to our employees, consultants, and advisors who are bound by confidentiality obligations, unless we have your permission to disclose it.



## **10. Privacy**

Please review the Service Provider Privacy, which can be found at <http://www.x-cart.com/privacy-policy.html> and which is incorporated into this Agreement by this reference. We will respect the privacy and confidentiality of your User Data, as described in our Privacy Policy. We also understand the importance of protecting the security of your User Data and agree to the practices set forth in the Privacy Policy regarding data security. Our Privacy Policy may be amended from time to time and posted in its amended form to our website. You will be deemed to agree to and accept the terms and conditions of this policy as last amended and you acknowledge that it is your responsibility to stay informed of changes to, our Privacy Policy.

## **11. Indemnification**

You will defend, indemnify and hold harmless Service Provider, its officers, directors and employees, from and against any liabilities, losses, damages and expenses, including court costs and reasonable attorneys' fees, arising out of or in connection with (a) any breach by you of this Agreement or (b) any third-party claim that (i) a third party has suffered injury, damage or loss resulting from your or an Authorized User's use of the X-Payments Application; or (ii) you or any Authorized User have used the X-Payments Application (or have allowed any other person to use the X-Payments Application) in a manner that violates any term or condition of this Agreement. We will provide you with prompt written notice of any such claim, and we will cooperate with you and provide you with all reasonably available information and assistance, at your expense, in the defense and settlement of such claim.

## **12. Termination**

### **12.1 Termination by You**

You agree to be bound by these terms and conditions until you close your account with Service Provider or until we terminate your account. You may cancel your account at any time, by following the instructions found under the heading "terminating your account" after you sign in to the X-Payments Application. Once your Service Provider account has been canceled, we will delete all of your User Data unless other arrangements have been made for storing the User Data for you, as described under "terminating your account".

### **12.3 Termination by Service Provider**

We may terminate your account at any time without notice if: (a) you have breached any provision of this Agreement or, (b) if we believe in our sole discretion that we are required by law to terminate your account. We may terminate your account at any time in our own discretion on 30 days' written notice to you.

## **13. Modifications**

We may modify these Terms of Use from time to time. We will notify you of all changes to these Terms of Use through a notice posted to the Service Provider.com website. We will also post on these Terms of Use the date on which they were last modified. You will be

deemed to have agreed to the Terms of Use as last modified and to be bound by them when you use the X-Payments Application after those modifications were posted.

## **14. General**

### **14.1 Governing law**

This Agreement will be governed by and construed in accordance with the laws of the State of Georgia, USA, excluding that body of law pertaining to conflict of laws. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Athens, the State of Georgia, USA and the parties hereby irrevocably consent to the personal jurisdiction thereof and venue therein. The parties agree, pursuant to Article 30(2)(b) of the Rules of the ICC, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.

### **14.2 Legal compliance**

You shall comply with all applicable domestic and international laws, statutes, ordinances and regulations regarding Your use of the Software, the Services, and Your sale of products and services via Your X-Payments.

### **14.3 Force majeure**

Except for the payment of any fees due and payable under this Agreement, neither party's delay in the performance of any duties or obligations under this Agreement will be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, failures in electric power or telecommunications services, or any other event beyond the control of the party.

### **14.4 Notices**

Except as explicitly stated otherwise, any notification or written communication required by or contemplated under the terms of this Agreement shall be in writing and shall be deemed to be delivered via Support Helpdesk which is located at <https://secure.x-cart.com>

### **14.5 Assignment**

You shall not assign, transfer or delegate this Agreement or any rights or obligations hereunder. Any assignment, transfer or delegation in contravention of the foregoing provision shall be null and void. You agree that this Agreement may be assigned by Service Provider, in Service Provider's sole discretion.

### **14.6 No third party beneficiary**

You acknowledge and agree that nothing herein, express or implied, is intended to nor shall be construed to confer upon or give to any person, other than the parties, any interests, rights, remedies or other benefits with respect to or in connection with any agreement or provision contained herein or contemplated hereby.

## **14.7 Severability; waiver**

If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck and the remaining provisions shall be enforced. Service Provider's failure to act with respect to a breach by You or others does not waive Service Provider's right to act with respect to subsequent or similar breaches.

## **14.8 Additional terms**

The following policies are incorporated into this Agreement by reference and provide additional terms and conditions related to the Services offered by Service Provider:

- (a) Service Provider's Privacy Policy: [https://www.x-cart.com/terms-of-service.html#privacy\\_policy](https://www.x-cart.com/terms-of-service.html#privacy_policy)
- (b) Service Provider's Pricing: <https://www.x-payments.com/pricing>
- (c) Moneyback Policy: [https://www.x-cart.com/terms-of-service.html#moneyback\\_policy](https://www.x-cart.com/terms-of-service.html#moneyback_policy)

## **14.9 Entire agreement**

This Agreement sets forth the entire understanding and agreement between You and Service Provider with respect to the subject matter hereof.