

# xpress BILL PAY

## Gateway and Administrative Service Agreement

This Gateway and Administrative Service Agreement is entered into this 7<sup>th</sup> day of November, 2018, by and between **Xpress Solutions, Inc.** ("Xpress") and **City of Bisbee, AZ** ("Customer") upon such terms and conditions as are set forth below.

WHEREAS, Customer desires Xpress, and Xpress agrees to provide, Automated Clearing House (ACH) and other services to Customer as indicated in and subject to the terms and conditions of, this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and the receipt of consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

- 1.0 **Term and Renewal**: The Initial Term (the "Initial Term") of this Agreement shall be thirty-six (36) months from the date of this Agreement. This Agreement shall automatically renew for an additional twelve (12) months at the end of the Initial Term or any subsequent renewal term by the Customer upon the receipt by Xpress of the applicable Fees and under the same terms and conditions set forth herein, so long as the Customer is not and has not been in default in any term or condition of this Agreement. If Customer is a political subdivision, the parties agree that an automatic renewal cannot occur if Customer's governing board does not budget for payment of the Fees set forth in Section 2.0 in any given fiscal year of Customer.
- 2.0 **Fees and Payments**: Customer shall pay to Xpress a one-time set-up Fee, monthly maintenance, support, and hosting Fees, and various transaction Fees as set forth in Exhibit A (collectively the "Fees"). Xpress reserves the right to change the Fees at any time so long as Customer is provided no less than 30 days advance notice of a change. Customer authorizes Xpress to initiate an electronic ACH Debit Entry from Customer's bank account provided in Exhibit C on or about the 5th day of each month for the amount of all Fees that accrued during the prior month for any service, support, or maintenance Fee that is due as described in Exhibit A. If there are insufficient funds in Customer's account to cover the Debit, Xpress will contact customer for resolution which will include resubmission up to 3 times. This authorization may be revoked only by notifying Xpress in writing, which revocation shall take effect no later than five (5) business days after receipt by Xpress. Any outstanding Fees that are not paid when due shall bear interest at the rate of 18% per annum until the outstanding balance and all accrued interest are paid in full.
- 3.0 **Services Provided; Obligations of Customer to ODFI**: Transactions are placed through Xpress as a third party sender of ACH transactions with Customer as the "originator" of those transactions under the Rules and Regulations described below. Xpress will send all transactions through an Originating Depository Financial Institution (ODFI) all in accordance with the terms of this Agreement, the Operating Rules of the National Automated Clearing House Association (NACHA) and the applicable Federal Regulations governing ACH transactions including, without limitation, the Electronic Funds Transfer Act and Regulation E (collectively the "Rules and Regulations"). Entry or Entries shall mean either a Credit Entry or a Debit Entry. Customer agrees to comply with Xpress's requests for record retention and signature authorization. Customer hereby grants to Xpress or its designee the right to audit these authorizations and Customer's record retention compliance, at no expense to Xpress.

Customer hereby agrees to, and otherwise assumes, all obligations under the Rules and Regulations as an originator to the ODFI with respect to all Entries, which includes without limitation the unconditional obligation of Customer to pay and indemnify the ODFI for all Entries that are returned by any Receiving Depository Financial Institution (RDFI) for whatever reason.

In addition to the other services referenced in this Agreement, Xpress will provide Customer with an internet payment system. Xpress has developed a web interface that can be used for payment of accounts using credit cards, or electronic funds transfers (EFT). Xpress acts as a payment gateway interface for Customer's account

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holders (the "End Users") to make payments. Xpress will facilitate the acquisition of the necessary merchant service accounts for credit cards. Xpress will provide the EFT and Lockbox services directly using its established banking relationships. Customer hereby authorizes Xpress to endorse checks and other payment items on behalf of Customer into an Xpress deposit account and deposit funds as necessary for the clearing of payments received for Customer. Xpress reserves the right to invest idle funds in its possession for the sole benefit of Xpress. Only merchant service accounts and electronic funds transfer accounts that are certified by Xpress may be used.

- 4.0 **Support Services and Service Levels:** Xpress will provide technical support services, including telephone, email (seven days a week), or other technology support implemented by Xpress, from 7:00 am to 6:00 pm (MST or MDT) for customers within the continental United States. The maximum response time for service shall not exceed 5:00 pm (Customer local time) of the next business day following the request for service by Customer. This support will be limited to the actual use of the Xpress internet payment system.
- 5.0 **Software or Hardware:** Customer will not receive any hardware or software from Xpress under this Agreement except as specified in Exhibit B. Customer will use its own computers and agrees to have internet services through an internet service provider. Customer agrees that the computers it uses will have sufficient memory and capacity to run at least Internet Explorer 8 or Mozilla Fire Fox 2.0.
- 6.0 **Debit Authorization:** Customer, as originator under the Rules and Regulations, hereby authorizes Xpress, or its designees, to initiate Debit and/or Credit Entries to Customer's bank account in accordance with this Agreement. Xpress' authority will remain in full force and effect until either (a) 90 days after Xpress has received written notification from Customer of the termination of this Agreement to provide Xpress reasonable opportunity to act upon any outstanding liabilities; or (b) all obligations of the Customer to Xpress that have arisen from this Agreement have been paid in full, including, but not limited to, those obligations described in this Agreement.
- 7.0 **Accepting Transactions:** Xpress will accept all completed batches from the Customer. Xpress is responsible for accepting and processing only those Entries that have been received in a proper format and on a timely basis. Any Entry returned to Xpress will be re-presented in accordance with the Rules and Regulations.
- 8.0 **Returned Entries:** Xpress will apply returned Entries to Customer's account when they are received. All returns will be processed and available through Xpress software or by other means as agreed to by Xpress and the Customer. With respect to each Notification of Change ("NOC") Entry or Corrected Notification of Change ("Corrected NOC") Entry transmitted by Xpress, the parties shall ensure that changes requested by the NOC or Corrected NOC are made by, or on behalf of, the Customer within six (6) banking days of Xpress receipt of the NOC information from the ODFI or prior to initiating another Entry to the Receiver's account, whichever is later.
- 9.0 **Reports:** Xpress will provide a detailed report of all funds transfers collected as a result of any and all funds transfers. All reporting will be via the Internet.
- 10.0 **Limits of Xpress Liability:** Xpress will be responsible for Xpress' performance in processing ACH services as a third party sender of ODFI transactions in accordance with the terms of this Agreement, and the other applicable Rules and Regulations. Xpress does not accept responsibility for errors, acts or the failure of others to act, including, and among other entities, banks, communications carriers or clearing houses through which Entries may be originated or Xpress receives or transmits information, and no such entity shall be deemed Xpress' agent. Xpress shall not be responsible nor bear any loss, liability or delay caused by fires, earthquakes, wars, civil disturbances, power surges or failures, acts of government or God, labor disputes, failures in communication networks, legal constraints or other events beyond Xpress' control.
- 11.0 **Representations and Warranties Regarding End Users:** Customer warrants that it will provide Xpress with relevant billing information for End Users. Customer agrees to indemnify and hold Xpress harmless from any claim or liability relating to any inaccuracy in billing information provided to Xpress. Customer further represents and warrants with respect to all Entries processed for Customer by Xpress that: (a) Each End User has authorized the debiting and/or crediting of his, her, or its account, (b) each Entry is for an amount agreed

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to by the End User, (c) each Entry is in accordance with the Rules and Regulations and properly authorized in all other respects. Customer agrees to defend, indemnify, and hold Xpress and all its agents harmless for any losses, liabilities, legal action costs or expenses incurred by Xpress as a result of any breach of these representations and warranties either intentionally or unintentionally by Customer. Customer shall cease initiating Entries immediately upon receiving actual or constructive notice of the termination or revocation by the End User of authority.

- 12.0 **Regulatory Compliance:** Customer will use its best efforts, and bears the final responsibility to ensure that Customer's policies and procedures meet the requirements of all applicable Rules and Regulations pertaining to ACH transactions of any kind. Xpress must and will also comply with all Rules and Regulations pertaining to ACH transactions. Without limiting the obligations of Customer to the ODFI under this Agreement and the Rules and Regulations for the payment of all returned Entries, Customer agrees to execute an origination agreement with the ODFI if required by the Rules and Regulations.
- 13.0 **Record Keeping:** Customer agrees to keep full and accurate data and records of its utilization of Xpress services and of the transactions giving rise to billing information for at least two (2) years after the date of the relevant transaction, or such longer period as required by the Rules and Regulations. Customer understands that Xpress and the ODFI will be required to participate in certain audits of Customer in connection with the credit card and electronic funds transfer services provided by Xpress. Customer agrees to cooperate with Xpress and ODFI in the performance of such audits, including providing information reasonably required in the course of such audits.
- 14.0 **Compliance:** Customer represents and warrants that all products and services offered, sold, or provided by Customer are offered, sold, or provided in compliance with all applicable laws and regulations. Customer agrees to comply with Xpress's Acceptable Use Policy as required by the Payment Card Industry Data Security Standard (PCI DSS) as provided in Exhibit D. Xpress will meet or exceed all applicable compliance requirements as required by current and future Payment Card Industry (PCI) rules of operation as well as the Rules and Regulations.
- 15.0 **Termination:** This Agreement may be terminated by either party upon not less than 30 days written notice to the other party specifying the effective date thereof. In the event this Agreement is terminated by Customer through no fault of Xpress, Xpress shall be paid for all services performed up to the date of termination.
- 16.0 **Governing Law; Attorney' Fees:** This Agreement shall be governed by and construed under the laws of the State of Utah. In the event suit or action is instituted to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party such sum as a court may adjudge reasonable as attorneys' fees at trial, on any appeal, and on any petition for review, in addition to other sums provided by law.
- 17.0 **Independent Contractors:** Both Customer and Xpress are acting hereunder as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other, except to the extent and for the purposes provided for herein.
- 18.0 **No Warranty:** Xpress makes no warranty, expressed or implied, including warranties of merchantability and fitness for a particular purpose. Xpress shall have no liability with respect to its obligations under this agreement for consequential, special, direct, exemplary, punitive, or incidental damages to customer or to third parties dealing with customer even if Xpress has been advised of the possibility of such damages.
- 19.0 **Entire Agreement:** This Agreement and the exhibits hereto constitute the entire understanding and agreement among the parties with respect to the subject matter hereof, and there are no other agreements or understandings among the parties other than those contained herein. In the event any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect the validity of the remainder of this Agreement.

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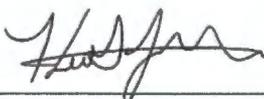
- 20.0 Successors and Assigns; Third Party Beneficiary: This Agreement shall be binding upon and inure to the benefit of the parties, and their respective heirs, successors and assigns. Neither party may assign its interest under this Agreement without the prior written consent of the other. The parties hereby agree that the ODFI with respect to any Entry, including Zion's First National Bank, a Utah state bank, shall have the right as a third-party beneficiary, in the event of a default under this Agreement or the agreement between Xpress and the ODFI, to enforce this Agreement directly and independently against Customer including the enforcement of Customer's liability to the ODFI as an originator under the Rules and Regulations.
- 21.0 Waiver: Failure of either party at any time to require performance of any provision of this Agreement shall not limit the parties' right to enforce the provision. Waiver of any breach of any provision shall not be waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

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By signing below, Customer and Xpress shall be legally bound and agree to the terms of this Agreement and all of its Attachments.

**Accepted by:**

Xpress Solutions Inc.

BY:   
\_\_\_\_\_  
(Authorized Signature)

Keith Jenkins  
(Print or Type Name)

TITLE: President/CEO

DATE: 10/4/2018

**Accepted by:**

City of Bisbee

BY:   
\_\_\_\_\_  
(Authorized Signature)

David M. Smith  
(Print or Type Name)

TITLE: Mayor

DATE: 11/8/18

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## EXHIBIT A

### FEES

#### Initial Configuration Fees

- |   |                 |
|---|-----------------|
| 1. Initial Setup Configuration and Development              | See Caselle     |
| Online Payment Module                                       |                 |
| Auto Pay Module   |                 |
| Card Swipe Module   |                 |
| 2. Training (One Full Day's Training)                       | See Caselle     |
| NOTE: You shall reimburse roundtrip airfare and hotel stay. | + airfare/hotel |

#### Recurring Monthly Fees

- |   |           |
|---|-----------|
| 3. Gateway Fees:  |           |
| Credit Card Processing (per transaction)  | \$ 0.30   |
| EFT Online Payments (per transaction)   | \$ 0.40   |
| EFT Returned Items  |           |
| (Invalid account number or unable to locate account)                              | \$ 5.00   |
| (NSF or Closed Account)   | \$ 10.00  |
| (Customer Stop Payment)   | \$ 25.00  |
| Bank Bill Pay (per transaction)   | \$ 0.20   |
| Lock Box Service (per transaction)  | * \$ 0.48 |
| Integrated Remote Deposit (per transaction)                                       | * \$ 0.30 |
| 800 Operator Assisted Payment (per call)  | \$ 0.95   |
| 800 IVR Assisted Payments (per call)  | \$ 0.95   |
| XBP Deposit Account Withdrawals   |           |
| (6 free per month then \$3.25)  |           |
| 4. Monthly Support & Hosting  | \$ 75.00  |
| (\$0.015 per billing statement hosted. Minimum \$75.00)                           | minimum   |
| 5. Monthly Account Keeping Fee  | \$ 19.00  |
| (Waived if you keep a \$25,000.00 minimum balance in your Xpress Deposit Account) |           |

*\* if service is activated*

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**EXHIBIT B**  
**OPTIONAL EQUIPMENT LIST PRICE LIST**

**Card Swipes**

USB Magnetic Stripe Credit Card Reader	\$ 75.00
USB Keyboard with Integrated Magnetic Credit Card Swipe	\$ 99.00

**Printers**

Star Micronics 40 Column Thermal Printer (Tear Bar, Gray Color, USB Connection)	\$ 240.74
Star Micronics 40 Column Thermal Printer (Tear Bar, Black Color, USB Connection)	\$ 304.40
Star Micronics 40 Column Thermal Printer (Auto Cutter, Gray Color, USB Connection)	\$ 252.50
Star Micronics 40 Column Thermal Printer (Auto Cutter, Putty Color, USB Connection)	\$ 261.43
Star Micronics 40 Column Thermal Printer (Auto Cutter, White Color, USB Connection)	\$ 323.21
Star Micronics 40 Column Thermal Printer (Auto Cutter, Black Color, USB Connection)	\$ 322.50
Star Micronics 40 Column Thermal Printer (Auto Cutter, Grey Color, Ethernet Connection)	\$ 336.96

**Check Scanners**

Panini VisionX 50 Check Scanner	\$ 945.00
Panini VisionX 75 Check Scanner	\$ 1,145.00
Panini VisionX 100 Check Scanner	\$1,345.00

**Miscellaneous**

FMC Checkmate Check Jogger	\$ 249.00
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*\* Please note: prices subject to change at any time without further notice.*

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**EXHIBIT C**  
**CUSTOMER ACCOUNT INFORMATION**

Please provide the following information regarding Customer's bank account to which the debit entries will be directed for the payment of the Fees:

Name on Account: City of Bisbee

Account Type: Business Checking

Routing Number: 122105278

Account Number: 458538632

Bank Name: Wells Fargo Bank, N.A.

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**EXHIBIT D**  
**ACCEPTABLE USE POLICY**

**Introduction**

Xpress Bill Pay is committed to providing high-quality payment services for its customers. This Acceptable Use Policy (the "Policy") is designed to assist in protecting the Service, our Users, and the Internet community as a whole from improper and/or illegal activity over the Internet. By using the Service, you acknowledge that you and your Users are responsible for compliance with the Policy. You are responsible for violations of this Policy by any User that accesses the Services through your account. The Policy will be updated and revised occasionally and posted to the Xpress Bill Pay website. The Company reserves the right to modify this Policy at any time, effective upon posting at [www.xpressbillpay.com/adminPolicy.asp](http://www.xpressbillpay.com/adminPolicy.asp).

**Purpose/Scope**

The purpose of this Policy is to help protect the Company's network, each of the Company's clients and third-party users of the Internet, generally from harassing, deceptive, irresponsible and/or illegal activities.

The scope of this policy is all the Company's clients.

**Policy**

This Policy governs the usage of the Company's network by any person (regardless of whether that person is a Customer). Each person utilizing the Company network in any manner is responsible for complying with this Policy, and for providing assistance to the Company in furtherance of the objectives hereof, as the Company may request from time to time. The Company's Clients will be held solely responsible for the actions (or inactions) of any of their customers, downstream users, or third-party agents that use the Company's Network.

**1.1 Prohibited Actions**

It shall be prohibited by this Policy to utilize the Company network in any manner which, in the sole discretion of the Company, is (A) illegal, disruptive, harassing or deceptive, or (B) a risk to the Company's network, its stability or security, or (C) inconsistent with this Policy and/or the Company's Rules and Regulations and/or any rules or policies of upstream Company network service providers. Set forth below, is a non-exclusive list of certain actions, omissions, etc., which are expressly prohibited under this Policy:

- Transmitting, distributing or storing any material in violation of applicable law, code or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret, protective order, contract, or other intellectual property right used without proper authorization. Also prohibited is material that is obscene, libelous, defamatory, constitutes an illegal threat, and/or violates export control laws
- Sending unsolicited bulk email messages and/or other advertising material to individuals who did not specifically request such material. This includes, but is not limited to, messages sent as email, "Spam," ICQ traffic, instant message traffic, GSM/GPRS data, or posting the same or similar message to one or more newsgroups (excessive cross-posting or multiple-posting). The Company's accounts or services may not be used to solicit customers from, or collect replies to, messages sent from another Internet Service Provider where those messages violate this Policy or the policy of the other provider. The Company reserves the right, in its sole discretion, to determine whether commercial email on the Company's Network complies with this Policy.
- Utilizing the Company's network (or any relay, proxy or other network element in conjunction with the Company network) to (A) forge the signature, IP address or other identifying mark or code of any other person, (B) impersonate or assume the identity of any other person, or (C) engage in any other activity

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(including "spoofing") to attempt to deceive or mislead other persons regarding the true identity of the user, including system identification information.

- Unauthorized attempts by a user to gain access to any account or computer resource not belonging to that user (e.g., "hacking" or "cracking"). This includes providing, or assisting in the provision of names, passwords or access codes to persons not authorized to receive such materials by the operator of the system requiring the password or access code.
- Obtaining or attempting to obtain service by any means or device with intent to avoid payment, violate policies or violate law. If a user is restricted or terminated from the Company's network, it is prohibited for a customer to make such services available to such user in an indirect manner.
- Unauthorized access, alteration, destruction, or any attempt thereof, of any information of the Company or any of the Company's clients or end-users by any means or device. This includes any deliberate or other attempt or activity to distribute or post any virus, worm, Trojan horse, or computer code intended to disrupt services, destroy data, destroy or damage equipment, or disrupt the operation of the Company's network or the network of a third-party;
- Knowingly engaging in any activities that will cause a denial-of-service (e.g., synchronized number sequence attacks) to users whether on the Company's network or on another provider's network.
- Advertising, transmitting, or otherwise making available any software, program, product, or service that is designed to violate this Policy or the Policy of any other Internet Service Provider, which includes, but is not limited to, the facilitation of the means to send e-mail spam, initiation of ping, flooding, mail-bombing, denial of service attacks, and piracy of software.
- Using the Company's network in any manner which interferes with the use of the Company's network by other customers or authorized users.
- Utilize the Company's network in any manner that might subject the Company to unfavorable regulatory action, subject the Company to any liability for any reason, or adversely affect the Company's public image, reputation or goodwill, including, without limitation, sending or distributing obscene, hateful, vulgar, racially, ethnically or otherwise objectionable materials as determined by the Company in its sole discretion.
- Using the Company's network to host, access, promote or otherwise distribute any child pornography or obscenity.
- Causing or allowing the Company's network and/or the customer, its IP space or other elements of identification to be placed on so-called "SPAM Block Lists," "Spam Early Warning Systems," or other directories of spam or unsolicited bulk email originators and/or network abusers. It shall be incumbent upon each of the Company's Clients to monitor and modify their usage, and that of their users and customers, to insure compliance with this Policy generally, and also of this provision specifically.

## **1.2 Enforcement**

The Company reserves the right, with or without notice, to restrict, block, modify or terminate services to any Client or user upon the threat or occurrence of a violation to the Policy. The Company reserves the right to cooperate with any court, law enforcement agency, investigator or network service provider in the investigation of threats to the integrity, stability, reliability and/or legality of the products and services offered by the Company and of any violations to the Policy.

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### **1.3 Client Duties**

Each Client is obligated to assist the Company in the investigation of any threatened, alleged or actual violation of this Policy. The Client shall cooperate with designees of the Company in this regard. Clients of the Company are responsible for immediately reporting to the Company any issue which could compromise the stability, service or security of any user or system connected to the Company's network.

### **1.4 Client Password Policy**

The Company's clients are required to follow the payment industry's user identification (User ID) and password best practices to protect the Company's sensitive credit card data. Client User IDs and passwords must meet the following requirements:

- User IDs must be unique to an individual and forever connected with a single user to whom it has been assigned.
- User must never share their IDs and/or passwords.
- Users must choose easily remembered passwords that are, at the same time, difficult for unauthorized parties to guess.
- Passwords are required to have a minimum of seven (7) characters.
- Passwords must meet strong password requirements. Passwords will contain both alphabetic and numeric characters. Passwords will also utilize upper and lower case letters and symbols.

### **1.5 Reports and Complaints**

Any reports or complaints about the use or misuse of the Company's products or services should be directed to:

Xpress Solutions, Inc.  
5252 N Edgewood Drive  
Provo, UT 84604  
800-768-7295  
[security@xpressbillpay.com](mailto:security@xpressbillpay.com)

### **1.6 Digital Millennium Copyright Act**

Xpress Solutions, Inc. maintains a separate policy on the handling of complaints under the Digital Millennium Copyright Act, which is incorporated into this Policy hereby and which may viewed at [www.xpressbillpay.com/copyright](http://www.xpressbillpay.com/copyright).

### **1.7 Handling Charges**

The Company reserves the right to assess a handling fee, at its usual emergency project labor rate, to respond to abuse complaints incurred by the Company relating to a client and/or to handle, address, clean up and/or correct damage done to the operation of the Company's Network and business operations supported thereby. The fees will be billed in one (1) hour minimum increments. The Company hereby agrees to waive such fee for the first instance per customer of any such complaint, but shall impose the fee from and after the second such complaint.

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