



CANADA END USER LICENSE AGREEMENT

Last updated: April 27, 2020

1. ACCEPTANCE

This *Canada End User License Agreement* (“EULA”) constitutes a binding agreement by and between Givex Canada Corp. on behalf of itself and its affiliates (“Givex”) and the Merchant, as defined in the *Canada Merchant Agreement* between Givex and Merchant, (the “Licensee”). To accept this EULA click the check box next to the phrase “**I AGREE TO THE END USER LICENSE AGREEMENT**”, which constitutes an electronic signature. By entering into this EULA on behalf of the Licensee, you are representing and warranting that you have the authority to bind the Licensee and you are agreeing to these terms and conditions on behalf of the Licensee.

PLEASE READ THIS EULA CAREFULLY BEFORE AGREEING OR USING THE GIVEX APP. LICENSEE’S USE OF THE GIVEX APP IS EXPRESSLY CONDITIONED ON ACCEPTANCE OF THIS EULA. ANY LICENSEE THAT DOES NOT AGREE WITH THE TERMS OF THIS EULA MAY NOT USE THE GIVEX APP.

Givex may update any part, term, or condition of this EULA at any time, which is effective as of posting, without prior notice to Licensee, so please check back from time to time for updates. By continuing to use the Givex App after update posting, Licensee is indicating its consent thereto.

2. DEFINITIONS

Confidential Information, Givex Documentation, Givex Services, Intellectual Property, Merchant, Merchant Program, Personally Identifiable Information shall have the meanings set out in the *Canada Merchant Agreement*.

“*Givex App*” means Givex’s proprietary gift/loyalty card application and any updates and upgrades thereto for use in processing gift and/or loyalty card transactions.

“*Territory*” means Canada.

3. TERM AND TERMINATION

3.1 Term. Licensee and Givex agree that this EULA commences on the date that Licensee agrees to this EULA (the “**Effective Date**”) and shall terminate upon termination of the *Canada Merchant Agreement*.

3.1.1 Notwithstanding the foregoing, Givex may terminate this EULA immediately if Licensee fails to comply with any of its terms. In addition, upon termination Licensee will have no recourse against Givex or its affiliates for Licensee’s inability to use the Givex App. In case of such termination, Licensee must cease all use, and destroy or return to Givex any copies of the Givex App, and delete any and all accounts Licensee may have established in connection with the Givex App.

4. LICENSE GRANT

4.1 License. Givex grants to Licensee a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to use the Givex App in the Territory to process gift and/or loyalty card transactions for the Merchant Program during the Term of this EULA.

4.2 Restrictions. The Givex App, including any updates or upgrades thereto from time to time, will be downloaded onto the Licensee’s device(s) by the Licensee for use in connection with the Merchant Program, which use is at all times conditioned on Licensee’s compliance with this EULA. Licensee shall not copy or use the Givex App except as expressly permitted in this EULA. Without limiting the generality of the foregoing, Licensee shall not: (i) use the Givex App for application development purposes, (ii) re-license, sublicense, transfer, rent or lease the Givex App, (iii) use the Givex App for third-party training or any other third party use, or (iv) disassemble, decompile or otherwise reverse engineer the Givex App.

4.3 Key. As a security measure to guard against unauthorized use of the Givex App, Givex has implemented a “key” program, which allows operation of the Givex App only if a user ID and password (collectively, “**Key**”) are used to access the app. If the Key is lost or stolen the Givex App cannot be accessed by Licensee. Please immediately report any lost or stolen Key to Givex at support.givex.com. Givex’s service representative will scramble the Key rendering it unusable and will replace the Key with a new one. Licensee may be required to pay a lost Key fee as set out in Schedule B in the merchant agreement between the Parties.



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5. PRIVACY

5.1 Limited Use of Personally Identifiable Information. Each Party agrees to comply with all applicable privacy laws and regulations relating to the protection, collection, use, and distribution of Personally Identifiable Information. Licensee shall be solely responsible for ensuring that the proper legal notices are provided to its customers at the time of the collection of any Personally Identifiable Information. Givex may use the Personally Identifiable Information obtained, collected or stored in connection with the Givex App in aggregate, anonymous form for the purpose of developing updates and upgrades to the Givex App and developing statistical information relating to the performance of the Givex App for internal use only.

6. CONFIDENTIALITY

6.1 General. Licensee acknowledges that the Givex App contains valuable trade secrets and Confidential Information of Givex. Licensee agrees to hold and maintain the Givex App in confidence, and not to furnish any other person with a copy of the Givex App. Licensee agrees to use a reasonable degree of care to protect the confidentiality of the Givex App. Licensee further agrees not to disclose the contents of the Givex App to any third party. Licensee shall not remove or alter any proprietary notices of Givex that may be on or in the Givex App. Licensee's obligations under this Section continue after this EULA has terminated. Without limiting the generality of the foregoing, Licensee further agrees not to publish or otherwise publicly distribute the results of any benchmark tests run or related to the Givex App that may be made available to Licensee by Givex.

7. INTELLECTUAL PROPERTY

7.1 Intellectual Property of Givex. Nothing in this EULA or otherwise shall give Licensee any right, title to, or interest in the Intellectual Property of Givex, and Licensee acknowledges and agrees that Givex is the sole and exclusive owner of and retains all right, title and interest in and to the Givex App and any derivative works thereof. No implied license or right is hereby granted. The Givex App is protected by the copyright laws and any other applicable Intellectual Property rights.

7.2 Intellectual Property of Licensee. Nothing in this EULA or otherwise shall give Givex any right, title to, or interest in the Intellectual Property of Licensee.

8. REPRESENTATIONS AND WARRANTIES

8.1 By Givex. Givex hereby represents and warrants to Licensee that: (a) it has all requisite corporate power to enter into this EULA and to carry out the terms of this EULA; (b) this EULA constitutes its valid and legally binding obligation, enforceable against it in accordance with the terms hereof; and (c) it is a corporation in good standing in its jurisdiction of registration or incorporation.

8.2 By Licensee. Licensee hereby represents and warrants to Givex that: (a) it has all requisite corporate power to enter into this EULA and to carry out the terms of this EULA; (b) this EULA constitutes a valid and legally binding obligation, enforceable against it in accordance with the terms hereof; (c) it is a business in good standing in its jurisdiction of registration or incorporation; and (d) it will use the Givex App only in connection with the Merchant Program and only in compliance with all applicable laws, rules and regulations, including without limitation, privacy and data security laws, rules and regulations.

8.3 Limited Givex Warranty. GIVEX WARRANTS, FOR LICENSEE'S BENEFIT ALONE, THAT FOR A PERIOD OF SIXTY (60) DAYS AFTER THE DATE THAT THE GIVEX APP IS DOWNLOADED ONTO THE TD TERMINAL, THE GIVEX APP WILL CONFORM, IN ALL MATERIAL RESPECTS, TO THE SPECIFICATIONS IN THE GIVEX DOCUMENTATION. DURING SUCH 60 DAY PERIOD, ON WRITTEN NOTICE FROM LICENSEE, GIVEX WILL USE COMMERCIALY REASONABLE EFFORTS TO IMPLEMENT APPROPRIATE CORRECTIONS TO THE GIVEX APP. GIVEX'S WARRANTY SERVICE IN ACCORDANCE WITH THIS SECTION WILL BE PERFORMED DURING GIVEX'S NORMAL WEEKDAY BUSINESS HOURS, EXCLUDING STATUTORY HOLIDAYS. GIVEX WILL PROVIDE LICENSEE WITH ANY MAINTENANCE RELEASES OR UPDATES IT MAKES TO THE GIVEX APP DURING THE 60 DAY LIMITED WARRANTY PERIOD.

8.3.1 GIVEX'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY OR OTHER CLAIMS OR DAMAGES OR LIABILITY WITH RESPECT TO THE SUBJECT MATTER COVERED BY THE LIMITED WARRANTY SET FORTH IN SECTION 8.3 SHALL BE GIVEX'S EXERCISE OF COMMERCIALY REASONABLE EFFORTS TO IMPLEMENT APPROPRIATE CORRECTIONS IN RESPONSE TO LICENSEE'S NOTICE OF AN ERROR. GIVEX WILL HAVE NO OBLIGATIONS HEREUNDER IF THE BREACH OF WARRANTY IS CAUSED BY ABUSE, MISUSE, ALTERATION, NEGLIGENCE OR ACCIDENTAL DAMAGE OF THE GIVEX APP;



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THE UNAUTHORIZED REPAIR, MODIFICATION OR INSTALLATION OF THE GIVEX APP; OR THE USE OR ATTEMPTED USE OF UNAPPROVED THIRD PARTY SOFTWARE OR HARDWARE IN COMBINATION WITH THE GIVEX APP. ANY REPLACEMENT OR REPAIR OF THE GIVEX APP DOES NOT EXTEND ITS WARRANTY PERIOD BEYOND THE ORIGINAL WARRANTY EXPIRATION DATE.

8.4 DISCLAIMER OF WARRANTIES. THE LIMITED WARRANTIES IN THIS SECTION 8 ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY GIVEX. EXCEPT FOR SUCH LIMITED WARRANTIES AND TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, THE GIVEX APP IS PROVIDED AND LICENSED ‘AS IS’ AND GIVEX EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE GIVEX APP, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTIES THAT MAY ARISE OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. GIVEX DOES NOT WARRANT THAT OPERATION OF THE GIVEX APP WILL BE UNINTERRUPTED OR ERROR FREE OR THAT THE FUNCTIONS CONTAINED IN THE GIVEX APP WILL MEET LICENSEE’S REQUIREMENTS.

8.5 LIMITATION OF LIABILITY. IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL EITHER PARTY HEREIN BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OR LOSS OF INCOME, PROFIT, OR SAVINGS OF ANY PARTY OR PARTIES, INCLUDING THIRD PARTIES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, CONTRACT, EQUITY, INTENDED CONDUCT, TORT, OR OTHERWISE), ARISING OUT OF OR RELATED TO THE GIVEX APP OR THIS EULA, WHETHER OR NOT SUCH PARTY OR PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.6 EXCEPT AS FURTHER LIMITED BY THE FOREGOING PARAGRAPHS OF SECTION 8, GIVEX’S TOTAL LIABILITY TO LICENSEE AND ANY THIRD PARTY UNDER THIS EULA AND ANY TRANSACTION CONTEMPLATED BY THIS EULA SHALL BE LIMITED TO THE AMOUNT EQUAL TO THE LICENSE FEE PAID BY LICENSEE TO GIVEX UNDER THIS EULA.

9. INDEMNITY

9.1 Licensee agrees to defend, indemnify, and hold harmless Givex and its affiliates and all of their respective directors, officers, employees, representatives, successors, and assigns from and against any and all claims, proceedings, damages, injuries, liabilities, losses, costs, and expenses (including reasonable attorneys’ fees and litigation expenses) relating to or arising from Licensee’s use of the Givex App or any breach by Licensee of this EULA.

9. GENERAL

9.1 Notice. Any notice by Givex hereunder may be made by letter or posting on or through Givex’s website, www.givex.com, or as otherwise specified herein.

9.2 Waivers. The waiver by any Party hereto of any provision, default or breach of this EULA shall not operate or be construed as a modification of this EULA or waiver of any other breach. No waiver of any provision, default or breach of this EULA shall be effective unless documented in writing and duly signed by the Party waiving any such provision, default or breach.

9.3 Force Majeure. Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay in the performance of its obligations due to any causes or conditions which are beyond such Party’s reasonable control and which such Party is unable to overcome by the exercise of reasonable diligence.

9.4 Survival. The obligations, representations, warranties, indemnities and limitations herein shall survive the expiration and termination of this EULA.

9.5 Governing Law. This EULA shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws applicable therein. Any and all disputes or controversies relating to or arising out of this EULA shall be settled by the courts in Toronto, Ontario, with the exclusion of any other, even if more privileged.

9.6 Entire Agreement. This EULA constitutes the entire agreement between the Parties relating to the subject matter herein and supersedes all prior written or oral agreements, representations and other communications between the Parties relating to the subject matter hereof.

FEEDBACK



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Should you have any questions concerning this EULA, you may contact Givex by writing to Givex Canada Corp., 134 Peter Street, Suite 1400, Toronto, Ontario, Canada, M5V 2H2. Attention: President.