

# Merchant Agreement Terms and Conditions

These are the terms and conditions ("**Terms and Conditions**") of the Merchant Agreement which is entered into among the merchant(s) (the "**Merchant**") whose information appears on the CAF and Moneris Solutions Corporation ("**Moneris**"), on its own behalf and on behalf of Royal Bank of Canada ("**RBC**") and Bank of Montreal ("**BMO**") and Alberta Treasury Branches ("**ATB Financial**").

Merchant wishes to permit its customers to use their credit and/or debit cards to purchase goods and services from the Merchant and has requested that Moneris/ATB Financial provide certain Card acquiring, processing and other services (collectively and individually, as applicable, the "**Services**") to Merchant.

The Merchant Agreement (the "**Agreement**") includes and incorporates by reference (i) the Information Summary Box, if applicable to you, (ii) the Fee Disclosure Boxes, if applicable to you, (iii) the CAF, (iv) these Terms and Conditions, (v) the Operating Manual and Procedures, the Card Brand Rules and Regulations and the Data Security Standards, and (vi) all Schedules applicable to your Services which can be found on our website at [www.moneris.com/CAFTC](http://www.moneris.com/CAFTC), as each may be amended, restated, supplemented or otherwise modified from time to time.

**Your acceptance of the Agreement will occur when you first use our Services. Your acceptance of any amendment, restatement, supplement or any other modification to the Agreement will occur when you first use our Services following notice of any such amendment, restatement, supplement or modification. Please ensure that you read your Agreement carefully. If you are not able to access and review any part of your Agreement, please contact our Merchant Customer Service Centre at 1-866-433-5204 to request a copy.**

RBC is a party to the Agreement for Visa and Interac Card acceptance services and BMO is a party to the Agreement for MasterCard Card acceptance services, as required by the Card Brand Rules and Regulations. RBC and BMO give notice that in reference to their rights, obligations and communications under the Agreement each of them has appointed Moneris as its agent for the purposes of communicating with you and fulfilling and exercising its obligations and rights under the Agreement. Moneris, RBC and BMO reserve the right to allocate among themselves their respective rights and obligations under the Agreement as they deem appropriate in their sole discretion and in accordance with the agreements between them and/or the Card Brands.

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## 1. Definitions

The following is a list of definitions that will assist you in understanding the Agreement. All definitions below or elsewhere in the Agreement apply to both their singular and plural forms, as the context may require. "Section" refers to sections in the Agreement. "I/including" means "including without limitation".

**"Affiliate"** means any Entity that controls, is controlled by, or is under common control with either party, including its subsidiaries. As used in this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an Entity, whether through ownership of voting securities, by contract, or otherwise. For the avoidance of doubt, but not by way of limitation, the direct or indirect ownership of 50% or more of (i) the voting securities or (ii) an interest in the assets, profits, or earnings of an Entity shall be deemed to constitute "control" of the Entity.

**"American Express"** means Amex Bank of Canada.

**"American Express Card"** means (i) any card, account access device, or payment device or service bearing an American Express or its Affiliate's Marks and issued by an Amex Issuer or (ii) a unique identifying number that an Amex Issuer assigns to the American Express Card when it is issued. American Express Card also includes any card or other account access device or service issued by a Third Party Card Issuer and bearing such Third Party Card Issuer's name or Marks but not the Marks of American Express.

**"Amex Issuer"** means any Entity (including American Express and its Affiliates) licensed by American Express or an American Express Affiliate to issue American Express Cards and to engage in the American Express Card issuing business.

**"Amex Merchant Guide"** has the meaning ascribed to that term in Section 22.

**"Applicant"** has the meaning ascribed to that term in Section 4.

**“ATB Financial”** means Alberta Treasury Branches

**“Authorization Code”** means the code provided by the Card Issuer indicating that the Cardholder’s account has sufficient credit or funds, as applicable, available to support the Transaction and that the Card is not currently blocked. For greater certainty even if an Authorization Code is provided, the Transaction may not be valid and may be subject to a Chargeback or other adjustment.

**“Authorized Third Party”** has the meaning ascribed to that term in Section 4.

**“Authorization System”** means the computer systems owned and/or operated by a Card Issuer and/or a Card Brand used to provide you with an Authorization Code.

**“Batch Close”** means the manual or automated process by which Transaction Records are confirmed to initiate settlement.

**“BMO”** means Bank of Montreal.

**“Business Day”** means any day other than Saturday or Sunday, on which banks are open for business in Toronto, Ontario.

**“CAF”** means your ATB Card Acceptance Form, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Card”** means any card representing any form of payment that is made available by a Card Issuer and for which we provide acquiring services to you.

**“Card Brand”** means Visa Canada Corporation and Visa, Inc., MasterCard International Inc., Discover Financial Services (Canada), Inc., UnionPay International Co., Ltd., Acxsys Corporation, the Interac Association, Amex Bank of Canada and their respective Affiliates, successors and assigns, as applicable based on the acquiring services we provide to you.

**“Card Brand Rules and Regulations”** means all applicable rules, regulations, by-laws, bulletins, guidelines, directives, manuals, policies, procedures, or any similar documents of each applicable Card Brand, as amended, supplemented, revised or otherwise modified from time to time, as published on the Card Brand websites or as we may advise you of in writing from time to time.

**“Card Brand Fines”** has the meaning ascribed to that term in Section 4.

**“Card Issuer”** means an Entity that issues Cards to Cardholders.

**“Cardholder”** means the person who presents a Card to Merchant for payment.

**“Cardholder Activated Terminal”** or **“CAT”** means a Cardholder-activated terminal (usually unattended) used to process Transactions that meets our specifications and security standards as well as the Data Security Standards and which reads, captures and transmits Card information and dispenses the product or provides a service in an environment where: (a) a Card is present; (b) a Cardholder is present; (c) the Cardholder completes the Transaction directly; and (d) an Authorization Code is obtained electronically.

**“Cardholder Data”** means information encoded or printed on a Card and a Cardholder PIN.

**“Card-Not-Present Transactions”** are Transactions completed where both the Cardholder and Card are not present at the point of sale and include mail orders, telephone and fax orders and Ecommerce Transactions.

**“CAT Transaction”** means a Transaction that is processed by a Cardholder Activated Terminal installed at any of your locations that accept a Cardholder’s Card for payment and records the Transaction without intervention by a site attendant.

**“Chargeback”** has the meaning ascribed to that term in Section 5.

**“Code of Conduct”** means the Code of Conduct for the Credit and Debit Card Industry in Canada.

**“Confidential Information”** means confidential or proprietary information including the terms of the Agreement, the Fees or any other pricing information, any Card Brand Rules and Regulations or Data Security Standards provided to you by us that are not publicly available, Moneris Intellectual Property, merchant numbers, merchant statements, information concerning Equipment, advertising, marketing, designs, plans, specifications, software and programs or methods of the operation of Equipment and financial information.

**“Data Compromise”** has the meaning ascribed to that term in Section 4.

**“Data Security Standards”** means the data security standards issued by the applicable Card Brand, PCI and/or Moneris, including Payment Card Industry Data Security Standard (“PCI DSS”), Payment Application Data Security Standard (“PA DSS”) and PIN Transaction Security Standard (PTS), which are made available at <https://www.pcisecuritystandards.org>, or as we may advise you of in writing from time to time, as each

data security standard may be amended, supplemented or otherwise modified by the Card Brand, PCI or us from time to time.

**“Discover”** means Discover Financial Services (Canada), Inc.

**“Ecommerce”** is the processing of online Transactions using electronic media over any public or private network.

**“Effective Date”** is the date you start using the Services.

**“Entity”** means a corporation, partnership, sole proprietorship, trust, association, or any other legally recognized entity or organization.

**“Equipment”** means Terminals and any other software, hardware or other payment processing equipment used by you in connection with processing of Transactions.

**“Fee Disclosure Boxes”** means, if applicable to you, the fee disclosure box and other fees box provided as a cover page of the Agreement in accordance with the requirements of the Code of Conduct.

**“Fees”** mean all fees, charges and other amounts applicable to the Services we provide to you as set out in the CAF, these Terms and Conditions and any applicable Schedule, or as we may otherwise advise you about from time to time (including without limitation any applicable Merchant Discount Rates, Chargeback fees, Card Brand fees, administration (set-up) fees, inactivity fees, deactivation fees and certification fees), plus any applicable taxes.

**“Foreign Transaction”** means a Transaction processed on a Card issued by a Card Issuer located outside of Canada.

**“Holdback”** has the meaning ascribed to that term in Section 17.3.

**“Indemnitees”** has the meaning ascribed to that term in Section 16.

**“Information Summary Box”** means, if applicable to you, the information summary box provided as a cover page of the Agreement in accordance with the requirements of the Code of Conduct.

**“Initial Term”** means the first three years after the Effective Date.

**“Integrated Solutions”** has the meaning ascribed to that term in Section 4.

**“Interac”** means the Interac Association and Acxsys Corporation.

**“Losses”** means damages, losses, liabilities, costs, interest, expenses (including taxes), fines, penalties, assessments, fees (including reasonable legal fees, professional fees and related costs).

**“Marks”** are names, logos, service marks, trademarks, trade names, taglines, or other proprietary designs or designations.

**“MasterCard”** means MasterCard International Inc.

**“MATCH System”** means the Member Alert to Control High-Risk merchants system maintained by MasterCard.

**“Member”** means: (i) RBC as the sponsor to Moneris, as required by Visa and Interac, for Visa and Interac Card acceptance services; (ii) BMO as the sponsor to Moneris, as required by MasterCard, for MasterCard Card acceptance services; and (iii) Moneris for Discover, UnionPay, American Express or any other applicable card brand Card acceptance or other services.

**“Merchant”** has the meaning ascribed to that term on the first page of these Terms and Conditions.

**“Merchant Direct”** means our proprietary electronic reporting system.

**“Merchant Payments”** has the meaning ascribed to that term in Section 12.

**“Merchant Discount Rate”** or **“MDR”** or **“Transaction Fee”** is the fee or the percentage of each Transaction that we charge for the acquiring and related Services we provide to you under the Agreement.

**“Moneris”** means Moneris Solutions Corporation.

**“Moneris Intellectual Property”** has the meaning ascribed to that term in Section 21.

**“Operating Manual and Procedures”** means the manuals, reference guides and procedures relating to processing Transactions and using your Equipment that we provide you and/or which are published on our website at [www.moneris.com](http://www.moneris.com) and <https://developer.moneris.com> as the same may be amended, supplemented or otherwise modified by us from time to time.

**“PCI”** means Payment Card Industry Security Standards Council.

**“Personal Identification Number”** or **“PIN”** means the confidential number that Card Issuers provide with a Card to authenticate a Cardholder and authorize Transactions through Terminals and which may be changed from time to time by such Cardholder.

**“Personal Information”** means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.

**“Process”** has the meaning ascribed to that term in Section 20.

**“Pre-Authorized Debits”** has the meaning ascribed to that term in Section 12.

**“Prohibited Transaction”** means a Transaction carried out in violation of applicable law and/or the Card Brand Rules and Regulations, which is unauthorized by the Cardholder, or any other Transaction which may be determined by us or a Card Brand from time to time to be a Prohibited Transaction.

**“RBC”** means Royal Bank of Canada.

**“Renewal Term”** means each subsequent six month term of the Agreement following the Initial Term.

**“Reserve”** has the meaning ascribed to that term in Section 11.

**“Services”** has the meaning ascribed to that term on the first page of these Terms and Conditions.

**“Schedule(s)”** means the respective additional terms and conditions applicable to your Services which can be found on our website at [www.moneris.com/CAFTC](http://www.moneris.com/CAFTC), as each of them may be amended, restated, supplemented or otherwise modified from time to time.

**“Term”** means the Initial Term and any Renewal Term.

**“Terminal”** means the point-of-sale payment processing hardware, firmware, mobile applications and/or other software used to process Transactions, including PIN pad devices and virtual payment processing solutions.

**“Transaction”** means any transaction between you and a Cardholder in which a Card is used in connection with a sale, a refund, or an adjustment to either.

**“Transaction Receipt”** means the form of receipt that you are required to use and provide to the Cardholder as proof of a Transaction including a sale, refund or adjustment and showing, among other things that we may inform you of from time to time in writing, the amount of the Transaction and whether the Transaction was approved or declined by the Card Issuer.

**“Transaction Record”** means the electronic record of a Transaction including, an Authorization Code, which is submitted to us in the form that we advise you of in writing from time to time in order to process your Transactions.

**“UnionPay”** means UnionPay International Co., Ltd.

**“Visa”** means Visa Canada Corporation and Visa, Inc.

**“We”, “us” and “our”** means, as the context so requires, Moneris Solutions Corporation or ATB Financial or both together.

**“Wireless Terminal”** means a mobile short range or long range Terminal that derives power from a battery and communicates over cellular or data communication services and includes a Terminal that is used in connection with wireless communications services.

**“You” and “your”** means the Merchant.

## **2. Processing Transactions**

- (a) It is your responsibility to ensure that you and your employees use our Services in accordance with the Card Brand Rules and Regulations, the Data Security Standards, the Operating Manual and Procedures, and all applicable laws related to Cardholder Data. You acknowledge that it is your responsibility to obtain the most recent versions of and that you have reviewed the Card Brand Rules and Regulations, the Data Security Standards and the Operating Manual and Procedures and you acknowledge that you have reviewed them.
- (b) You will not process Prohibited Transactions. You are responsible for managing your business operations and the actions of your employees (or any other person that uses the services provided for in the Agreement). You will not use our services to process Transactions for another person, Entity or merchant. You agree that each Transaction: (i) will be in the ordinary course of your business; (ii) not involve a cash advance (unless as authorized by the Card Brand Rules and Regulations); and (iii) not cover an existing debt or a dishonoured cheque.

You will not accept Card-Not-Present Transactions unless you receive our prior written consent.

- (c) You will honour Cards that are presented to you as a form of payment in accordance with the Agreement. You must not engage in any acceptance practice that discriminates against or discourages the use of a Card in favour of any other particular Card Brand, for example by charging a fee or surcharge on Transactions or setting a minimum or maximum value, unless you are permitted to do so by the Card Brand Rules and Regulations. You may not refuse to honor a Card or complete a Transaction solely because a Cardholder refuses to provide additional identification information (such as telephone number or address), unless the additional information is required to complete the Transaction, such as for mail order, telephone order, or Ecommerce Transactions, or is required by the Card Issuer, the Card Brand Rules and Regulations or if we instruct you to do so or if you find the circumstances of the Transaction questionable.
- (d) You must communicate to your customers, in a conspicuous manner, your policy for exchanging, returning and adjusting the price of goods or services that were paid for with a Card. If your business has a “no refund” or “no exchange” policy, this must be clearly indicated on the Transaction Receipt or conspicuously displayed in your place of business and on your website. You will settle any claims or disputes directly with your customers. If a purchase made using a Card is returned, a credit or refund must be issued to the same Card by completing a Transaction Receipt and not in cash.
- (e) You will display the promotional material and decals we provide to advise the public that you accept Cards at your place of business and on your website.
- (f) You will issue a Transaction Receipt for each Transaction and provide such Transaction Receipt to the Cardholder. You agree that each Transaction Receipt represents an obligation of the Cardholder and will allow the Card Issuer to collect the value of the Transaction from the Cardholder. You will keep and maintain copies of all Transaction Receipts for at least 24 months. We have the right to inspect and copy your records relating to Transactions at any time during normal business hours. If we ask you to provide us with a copy of a Transaction Receipt within 24 months of a Transaction, you will provide a copy to us within 8 days of our request. If you do not provide the requested Transaction Receipt, or the Transaction Receipt you provide does not correspond in all respects to the Transaction Record you sent to us of the same Transaction, the amount of the Transaction will be a debt payable to us and the Member and will be collected pursuant to Section 12 (Settlement and Adjustments).
- (g) If you accept CAT Transactions, the following terms and conditions apply:
  - (i) You agree not to accept CAT Transactions unless we have accepted you to process CAT Transactions and approved your Cardholder Activated Terminals.
  - (ii) If you process CAT Transactions, you agree to disclose clearly to the Cardholder that you, rather than any supplier of goods and services, are the merchant of record and are responsible for Transactions, products and services, customer service, dispute resolution and all terms and conditions of sale. In processing CAT Transactions, you agree that the rest of this Section 2 applies.
  - (iii) You also agree that for all CAT Transactions:
    1. the Cardholder must present the Card through or to an appropriate Card reader; and
    2. the Transaction must receive an Authorization Code.
  - (iv) If the Card used for a CAT Transaction is rejected, you agree not to deliver the goods or services unless you negotiate a different form of payment for the goods or services. For the avoidance of doubt, all CAT Transactions may be subject to a Chargeback in accordance with the terms and conditions of the Agreement.
  - (v) You agree to identify CAT Transactions in all Transaction Records in the manner we require in our procedures. You agree that all of your CATs must meet the Data Security Standards, as applicable from time to time. You further agree that changes to the Data Security Standards must be implemented in accordance with Card Brand Rules and

Regulations, including the CAT must display the maximum dollar amount for a financial transaction to the Cardholder before the PIN is entered and the device and its surroundings must be designed to minimize the risk of PIN disclosure.

### 3. Batch Close and Transaction Records

- (a) Within one day of the Transaction date, you will: (i) execute a Batch Close; or (ii) upon prior written approval from us, deliver your Transaction Records by creating and providing clearing and settlement files to us.
- (b) If you deliver your Transaction Records by creating and providing clearing and settlement files to us, you will:
  - (i) follow the Operating Manual and Procedures and any other procedures that we may notify you of in writing from time to time with respect to clearing and settlement files;
  - (ii) use the access codes, passwords and other identifiers we provide and take all necessary steps to guard against their theft, loss or fraudulent use;
  - (iii) allow only authorized persons to use your access codes, passwords and other identifiers we provide. Anyone using your access codes, passwords and other identifiers will be considered to have your authorization unless you tell us otherwise; and
  - (iv) tell us promptly about any loss, theft or unauthorized knowledge or use of your passwords and identifiers.

### 4. Data Security and Protection of Cardholder Data

- (a) All Cardholder Data may only be collected, used and disclosed by you to us, the Member or an Authorized Third Party and only for the purpose of completing the Transaction. You are required to take reasonable steps to ensure that a Cardholder's PIN is not disclosed and is protected at all times. You will not require nor ask a Cardholder to disclose their PIN.
- (b) You are not permitted to use a third party, including any third party software products, to process, transmit or store Cardholder Data unless you receive our prior written consent to use such third party or third party software product (each, an "**Authorized Third Party**"). You are responsible for ensuring that any Authorized Third Party is compliant with the Data Security Standards, the Card Brand Rules and Regulations, the Operating Manual and Procedures, and all applicable laws related to Cardholder Data. You must provide us with prior written notice of any changes in any Authorized Third Party relating to the processing, transmission or storage of Cardholder Data and we reserve the right, upon written notice to you, to make reasonable modifications to the terms of the Agreement.
- (c) You understand that: (i) if you or any Authorized Third Party fail to comply with the Card Brand Rules and Regulations or the Data Security Standards; (ii) if you receive an excessive amount of Chargebacks or if the number of Transactions processed by you on fraudulent or counterfeit cards is excessive, in each case as determined by the Card Brands; or (iii) if any Card Brand determines that you or any Authorized Third Party are the likely source of any suspected or actual loss, disclosure, theft or compromise of any Cardholder Data or Transaction Records (whether such Cardholder Data or Transaction Records is under your control or the control of an Authorized Third Party) ("**Data Compromise**"), then the Card Brands may impose on us or the Member fines, fees, penalties, assessments, costs, expenses, reimbursements and any other charges or financial liabilities (including for monitoring, cancelling, and/or re-issuing Cards and/or for the amount of any fraudulent charges) (the "**Card Brand Fines**").
- (d) You are responsible for any Card Brand Fines and will indemnify us and the Member for any Card Brand Fines pursuant to Section 16. You further acknowledge and agree that such Card Brand Fines are imposed by the Card Brands to mitigate the Losses of the Card Brands and the Card Issuers and that we and the Member cannot and are not obligated to provide you with any supporting documents with respect to any Card Brand Fines (including for the calculation of the amount of the Card Brand Fines or for the corroboration of Card Brand or Card Issuer Losses) other than what is provided to us by the Card Brands.
- (e) You represent and warrant to us that neither the Merchant nor any partner, owner, principal,

guarantor, proprietor, officer, shareholder, Affiliate or other persons whose information appears on the CAF (the “**Applicant**”) nor any other entity in which the Merchant or the Applicant has had ownership or control in the last 3 years: (i) has been in violation of the Card Brand Rules and Regulations or the Data Security Standards; or (ii) has suffered a Data Compromise, in each case, within the last 3 years.

- (f) You will provide us with information, (including, without limitation, a report on compliance issued by a Qualified Security Assessor from PCI and/or a self-assessment questionnaire as prescribed by PCI) from time to time for the purposes of verifying that you and your Authorized Third Parties are complying with the Data Security Standards, the Operating Manual and Procedures, the Card Brand Rules and Regulations and applicable laws related to Cardholder Data.
- (g) You will provide us with assistance in the investigation of any suspicious activity, including suspected, potential or actual fraud, Data Compromise, Card skimming incidents, or any other security compromise involving Cardholder Data, including: (i) permitting us, the Member, the Card Brands and/or any third party authorized by us, the Member or the Card Brands to inspect your premises, computers and all equipment and software used in connection with the processing, transmission or storage of Cardholder Data; and (ii) providing us with reasonable information related to your Transactions, including documents relating to suppliers from whom you purchase goods and services and/or your employee shift logs within the timeframe required by the Card Brand.
- (h) You will inform us promptly if you or any Authorized Third Party have suffered or suspect you have suffered any potential or actual fraud, Data Compromise, Card skimming incidents or any other security compromise involving Cardholder Data. If we or any Card Brand requires a forensic examination of you or any Authorized Third Party, you will cooperate with and cause any Authorized Third Party to cooperate with such forensic examination. You will implement all recommendations set forth by the forensic examination. You are responsible for all costs and fees related to the forensic examination and the implementation of any recommendations.
- (i) If you use software products or solutions by third parties, including Authorized Third Parties, which require integration with our payment processing platform or other Moneris systems (“**Integrated Solutions**”), you acknowledge and agree that such third parties and the Integrated Solutions must meet our security standards and specifications and, if required, be properly certified by us. You further acknowledge and agree that such third parties are acting as your agents and that we can share with them any of your Merchant credentials, including store ID, API tokens, configuration information and keys, or any other information required to enable the integration of the Integrated Solution with our payment processing platform or other Moneris systems. You are responsible for the use of your Merchant credentials by such third parties and the Integrated Solutions, including for any Transactions processed in connection therewith, and you agree to indemnify us and the Member for any Losses arising from such use.

## 5. Chargebacks

This Section 5 applies to credit card processing only.

### (a) Chargeback Reasons

If a Cardholder disputes any Transaction or if a Transaction is charged back for any other reason in accordance with the Card Brand Rules and Regulations (and regardless of whether an Authorization Code for such Transaction was received), the credit or payment to you for such Transaction may be reversed (a “**Chargeback**”). You acknowledge and agree that you are responsible for all Chargebacks. We and the Member do not decide which Transactions result in a Chargeback and we and the Member do not initiate a Chargeback. A list of some common reasons for Chargebacks is contained in the Operating Manual and Procedures and includes: (i) failure to issue a refund to a Cardholder upon the return or non-delivery of goods or services; (ii) failure to follow proper acceptance or authorization procedures as set out in the Operating Manual and Procedures; or (iii) the Cardholder did not authorize the Transaction. This list is not exhaustive and does not limit the generality of the foregoing.

(b) **Chargeback disputes**

If you have reasons to dispute or respond to a Chargeback, then you must respond to our request for information regarding the Chargeback within 7 calendar days of our request. We will not investigate or attempt to obtain a reversal or other adjustment to any Chargeback if you have not responded within 7 calendar days of our request.

(c) **Excessive Chargebacks, Counterfeit and Fraud**

If you are receiving an excessive amount of Chargebacks or if the number of Transactions processed by you on fraudulent or counterfeit cards is excessive, in each case as determined by the Card Brands, you agree and acknowledge that you are responsible for any Card Brand Fines levied as a result of these Transactions. You will cooperate with us to determine why your Chargeback volume or the number of Transactions processed on fraudulent or counterfeit cards is excessive and to implement measures to reduce the volume. We may terminate access to the Authorization System for any of your locations if the Chargeback volume or the number of Transactions processed on fraudulent or counterfeit Cards is deemed by us to be excessive or exceeds the Card Brand's accepted levels.

## **6. Exclusivity**

You will not enter into an agreement or arrangement with anyone else regarding the acceptance of Cards and, if we rent Terminals to you, the rental of Terminals.

## **7. Changes in Your Business**

- (a) You will provide us with prompt notice of any changes to your business or the manner in which you carry on business that may reasonably impact the level of risk (including reputational risk) and/or exposure to us (including a corporate reorganization, a change of control, a sale of all or substantially all of your assets, any proposed assignment by you of the Agreement, an increase in your Transaction volumes, or any change to the core business for which you use our services).
- (b) It is also your responsibility to tell us if you are a member of an association recognized by us, and you acknowledge that you are not entitled to the benefits of association members unless and until you do so.
- (c) We will review the risk and/or exposure to us of the continued provision of Services to you on a regular basis and we may, as a result of any such review, make reasonable modifications to the terms governing the provision of Services to you. In the course of such review, we may request and you will provide such additional information and access as we deem reasonably necessary.

## **8. Equipment**

(a) **Third Party Equipment.**

If you use Equipment that is not provided by us, it is your responsibility to ensure that it complies with the Card Brand Rules and Regulations and the Data Security Standards at all times. You must consult with us to ensure that your Equipment meets our specifications and, if required, is properly certified by us.

You are required to have an imprinter to permit your stores or locations to process Transactions in accordance with the Operating Manual and Procedures when your electronic system is not working or if your Terminals are unable to read a Card. You may rent imprinters from us for a fee or you may rent or buy them from another provider, but it is your responsibility to ensure that you have an imprinter and that you use it in accordance with the Operating Manual and Procedures.

(b) **Equipment Provided by Us.**

If we provide you with Equipment, we will arrange for your Equipment to be delivered. Any Equipment we provide to you is our property and will not become a fixture under any circumstances. You will reimburse us for any loss, damage or expense resulting from (i) your or any Authorized Third Party's misuse of the Equipment; or (ii) another person obtaining a right or an interest in any of our Equipment. You do not have the right to sub lease the



Equipment. Any repairs to the Equipment that we provide must be performed by us or our designated service provider.

(c) **Installation of Equipment.**

Prior to the installation of any Equipment, you agree to be responsible for ensuring that: (i) the electrical, communication, and other physical facilities comply with all applicable laws, regulations and building codes that apply to the installation and functioning of the Equipment; and (ii) all consents, authorizations and approvals that apply to the installation of Equipment have been obtained from the relevant parties. You agree to install, deploy and activate Equipment in accordance with the Operating Manual and Procedures and any other procedures that we or our designated service provider may provide to you. On-site installation assistance is available subject to additional fees. Unless we tell you that we are ordering telecommunications facilities or you have made some other arrangement with us for them, you will make arrangements and order the telecommunications facilities needed to link Equipment with our network(s). You will pay all costs associated with this.

(d) **Using/Moving Equipment.**

You will use all Equipment according to the Operating Manual and Procedures and any other procedures that we or our designated service provider may provide to you. You acknowledge that Equipment can be used for transactions and services that are not included in the Agreement or in any other agreements you have with us, such as communicating with issuers of other types of cards. You agree that we are not responsible for such transactions or services or for any failure of a Terminal to communicate with other persons, including with issuers of other types of cards. You agree to reimburse us for any loss, damage or expense we incur because you did not use the Equipment according to our procedures. You may upgrade your Equipment during the Term of the Agreement, subject to an agreed upon fee and provided that such upgraded Equipment is certificated by us to communicate with our network(s). If you need to move Equipment to another location after it has been installed, or if multiple Terminals are being moved or exchanged, you will get our permission in advance and pay any expenses to have it moved by us, or our designated service provider. You will keep and use any Wireless Terminals only at locations (or within conveyances) which are necessary for your business. If we ask you, you will tell us where each Wireless Terminal is at any time and who is in possession of it.

(e) **Administration Card and Passcode.**

If we provide you with an administration card and/or passcode for use when completing returns, reversals, manual processing of Transactions, or any other purpose, you will ensure that these are kept in a secure place for your protection. You will be liable for any use of the administration card and/or passcode, unless you tell us that it has been lost or stolen, or that you suspect it has been. We are the owner of each administration card and passcode or any other tools we issue to you. No one but you and your personnel are permitted to use these cards, passcodes or tools and you do not have the right to assign or transfer them to anyone else.

(f) **Terminal Security/Lost or Stolen Equipment.**

You will tell us promptly about any errors, malfunctions or other operational problems involving Equipment or if your Equipment is stolen, lost, damaged or used without your authorization. You are responsible for any loss, theft or damage to any Equipment we have provided to you, except for normal wear and tear. It is your responsibility to implement adequate security measures and controls to ensure the security of any Equipment in order to prevent any tampering or other fraudulent activities. You will provide timely access to allow us to inspect any Equipment that is connected to our network to verify the integrity of the associated software, firmware and/or hardware and make any necessary repairs or changes. We may, at your expense, take reasonable steps to ensure that your Equipment meets our standards. If you have purchased your own Equipment, you will: i) tell us if any Equipment is going to be sold, destroyed or put under repair; and ii) destroy the cryptographic keys in your Terminal prior to having your Terminal repaired or selling or destroying your Terminal.

(g) **Maintenance and Support.**

We will rectify service and maintenance problems with any rental Equipment that we provide to you, including the provision of parts, for the term of the Agreement, provided, however, that we are not responsible for any maintenance, repairs or replacements required as a result of your negligence, willful misconduct or failure to comply with the Agreement or the manufacturer's operations manual. In addition, we will not be responsible for maintenance, repairs or replacements required as a result of telephone line problems, electrical problems, accidents, spilled liquids, vandalism, dropping, disasters such as fire, flood, wind, lightning or other acts of God, or unauthorized attachments, repairs, alterations or modifications to our rental Equipment. You agree that you will not permit any company or person, other than us or our service providers, to provide service and maintenance to our rental Equipment for the duration of the Agreement. If we need to replace our rental Equipment for any reason, we may replace it with any other rental Equipment so long as the replacement enables you to perform the services described in the Agreement.

(h) **Cancelling Your Equipment Rental.**

You can stop renting Equipment from us at any time by giving us prior written notice and by returning the Equipment we sent to you at your cost.

## 9. Telecommunications

You will make arrangements and order the communication facilities needed to link the Equipment with our network(s) and pay all associated costs. If you require assistance with these arrangements, and we are able to assist you, you authorize us to make the necessary arrangements with the third party communications provider, subject to the following:

- (a) you are responsible for all aspects of compatibility, installation, operation, security and systems integration and any and all payments due and owing to third party communications providers;
- (b) we will have no liability to you for any losses whatsoever that you suffer due to the failure or disruption of communications service and/or support;
- (c) you agree to indemnify us for any and all payments we may make to any third party communications providers on your behalf;
- (d) you are not a third party beneficiary of any agreement between us and a third party communications provider; and
- (e) you will follow any applicable policies of the telecommunications provider.

## 10. Fees

- (a) You will pay us for the Services we provide to you all applicable Fees that we advise you about (plus applicable taxes).
- (b) We can change the Fees or the Fee structure applicable to you, including by implementing new Fees or a new Fee structure, by giving you written notice.
- (c) If you are renting Equipment from us, you will pay the applicable monthly Equipment rental Fee and any applicable taxes in advance, calculated from the date on which we ship your Equipment to you. You will continue to pay us the Equipment rental Fees until you return your Equipment to us and we receive it.

## 11. Reserve and Security Interest

- (a) In the event of any of the circumstances listed in Section 11(b), we and the Member may be subject to additional risk. Based on this additional risk to us and the Member in continuing to process your Transactions, we or the Member may establish a reserve account or increase the amount of an existing reserve account in accordance with Section 12, or may require you to provide other security to us or the Member (the "**Reserve**").
- (b) We may require a Reserve if:
  - (i) there is a change in your business (as described in Section 7 - Changes In Your Business);
  - (ii) you fail to provide to us your financial statements or we are of the view that your financial

situation has deteriorated;

(iii) we have grounds for believing that we may be subject to any additional liabilities arising out of or relating to the Agreement, including, any Card Brand Fines;

(iv) you receive or we expect that you will receive excessive Chargebacks;

(v) the number of Transactions processed by you on fraudulent or counterfeit cards is excessive or we expect it to be excessive;

(vi) there is a material breach of the Agreement by you;

(vii) we have grounds for believing that you have suffered a Data Compromise;

(viii) you revoke or provide notice that you intend to revoke your authorization for Pre-Authorized Debits; or

(ix) you failed, or your Authorized Third Party has failed, to comply with the Card Brand Rules and Regulations or the Data Security Standards.

(c) We and the Member may (but are not required to) apply funds in the Reserve toward the satisfaction of any amounts which are or may become due from you pursuant to the Agreement. Funds in the Reserve will not bear interest.

(d) The repayment to you of any balance of the Reserve is subject to Section 17.3(b).

(e) You acknowledge that the Reserve and any Holdback do not involve or create any trust, custodial, agency, liability to segregate or other similar obligations on us or the Member.

(f) You grant us and the Member a security interest (and, for the purposes of the laws of the Province of Quebec, a hypothec to the extent of the sum of \$1 million) in any Equipment that you have purchased and in your bank accounts to secure any and all of your obligations, present and future and however arising or incurred, to us and/or the Member under the Agreement. You irrevocably authorize us to file any financing statement (at your expense) in any relevant jurisdiction or any other documents or instruments related to this security interest. You acknowledge receipt of a true copy of the Agreement and waive, to the extent permitted by applicable laws, all rights to receive copies of financing statements, financing change statements, verification statements or copies of other notices or filings made by us at any time in connection with any security interest.

## 12. Settlement and Adjustments

(a) Subject to Section 12(c) and 12(e), the Member will credit the Transaction proceeds to the bank account(s) provided by you and will use reasonable commercial efforts to settle with you by crediting to your financial institution an amount equal to the value of the Transactions you present to us for settlement within two (2) Business Days of a Batch Close or the date that we receive your clearing and settlement files, as applicable pursuant to Section 3. The Member reserves the right to modify the terms of settlement. You acknowledge that it is the responsibility of your financial institution to credit your account after receiving our electronic transfer of funds. It is your responsibility to pay any fees charged for accepting these deposits or for processing any other credits or debits described in the Agreement.

(b) You are responsible for and you will pay to us or the Member, as applicable, in accordance with the Agreement all of the following:

(i) the Fees and any applicable taxes;

(ii) such amounts as are necessary to maintain at all times the minimum balance of the Reserve in accordance with Section 11;

(iii) such amounts as are necessary to establish the Holdback in accordance with Section 17.3;

(iv) any Chargebacks;

(v) any Card Brand Fines;

(vi) costs relating to rental Equipment that is lost, stolen or damaged or Equipment service charges levied pursuant to Section 8;

- (vii) any costs and fees incurred by us or the Member in connection with audits, examinations, inspections, reviews or other investigations performed in accordance with the Agreement; and
  - (viii) any other fees, costs and charges applicable to you for the Services and any other amounts which are otherwise payable under the Agreement,  
(collectively, the “**Merchant Payments**”).
- (c) You acknowledge and agree that we and/or the Member may pursue any one or more of the following options to collect any of the Merchant Payments which are due and payable pursuant to the Agreement:
  - (i) set-off the Merchant Payments against all or some of your Transaction proceeds, funds in the Reserve and/or Holdback and/or any other payments or credits that you may be or become entitled to under the Agreement or otherwise from us or the Member;
  - (ii) debit or freeze any of your bank accounts (or combination thereof) in accordance with Section 12(d); or
  - (iii) demand and receive payment from you for any outstanding amounts.
- (d) You authorize us and the Member to instruct any financial institution to debit any of your bank accounts (or combination thereof) and to transfer to us or the Member funds in the amount of the Merchant Payments (“**Pre-Authorized Debits**”). You agree that the financial institution is unconditionally authorized to act upon our instructions without further confirmation or authorization from you and the delivery of this authorization to us shall be deemed to constitute delivery by you to the financial institution. You acknowledge and agree that the Pre-Authorized Debits are for business purposes and are regular occurring and not sporadic payments. If any Pre-Authorized Debit is dishonoured by your financial institution for any reason, we and/or the Member may issue another debit in substitution for the dishonoured Pre-Authorized Debit. Any fees and charges imposed by the financial institution in respect of a dishonoured debit shall be your responsibility. In the event that a Pre-Authorized Debit results in an overdraft in your bank account, you agree to pay us and/or the Member the amount of the overdraft immediately. **You waive the right to receive pre-notification from us of the amount or the dates on which Pre-Authorized Debits will be processed, as well as notice of any and all future changes to the amounts to be debited or the payment dates.** This authorization is revocable and may be cancelled by you at any time upon thirty days’ notice to us. We may continue to issue Pre-Authorized Debits during and until the expiration of the notice period. To obtain a sample cancellation form or more information on the right to cancel this authorization, you may contact the financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca). You have certain recourse rights if any Pre-Authorized Debit does not comply with this authorization. For example, you have the right to receive reimbursement for any Pre-Authorized Debit that is not authorized in accordance with the Agreement. To obtain more information on your recourse rights you may contact the financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca). You consent to the disclosure of any personal information that may be contained in the Agreement to the financial institutions processing Pre-Authorized Debits. You agree not to directly or indirectly block, prevent or otherwise preclude any Pre-Authorized Debits. Notwithstanding anything to the contrary in the Agreement, you acknowledge and agree that if you revoke your authorization for Pre-Authorized Debits the Agreement may be terminated immediately by us without notice in accordance with Section 17.2.
- (e) You acknowledge that any payment made or credit given to you as settlement for a Transaction is an advance of funds, until the Transaction is not capable of being subject in whole or in part to a Chargeback or other adjustment. You further acknowledge and agree that we and the Member may withhold the Transaction proceeds or other credits or payments under the Agreement and/or transfer such funds if we suspect that you have processed a Prohibited Transaction, suffered a Data Compromise or any other security compromise, or potential or actual fraud, or if we or the Member are required to do so by a court order or applicable law.

### 13. Your Obligation to Review your Statements within 30 Days

Your statements are available for review on Merchant Direct, or any other form of electronic or paper reporting system that we may make available to you from time to time and it is your obligation to review your

statements. You will review all of the Transactions listed on your statement, and tell us in writing within 30 days of receipt in the case of paper statements, or within 30 days of the Transaction date for activity viewed electronically, about any concerns, including suspected omissions, incorrect debits or inaccurate Transactions or Fees. If you do not receive a statement or if you are unable to view your Transaction activity or statement electronically you will tell us promptly. Otherwise, you agree that all items, including Fees, listed on your statement are correct and you release us and the Member from any claim relating to any item listed and any item suspected to be missing from your statements.

#### **14. Financial Statements**

- (a) You agree to provide us with financial statements or any other documents that we may reasonably require to ensure that we are comfortable providing you with the Services under the Agreement.
- (b) If we are of the view that your financial situation has deteriorated, you will provide us with any information that we reasonably request in an acceptable form, provide us with collateral and/or establish a Reserve to secure the performance of your obligations under the Agreement.

#### **15. Cross Guarantee**

If more than one Merchant is processing Transactions under the Agreement, each Merchant guarantees to each of us and the Member, as an irrevocable and continuing guarantee, the due and punctual payment of all obligations, present and future and however arising or incurred, of each other Merchant to us or to the Member under the Agreement and/or any other agreement between that other Merchant and us, and agrees that there will be no defence to its liability as guarantor except the full and permanent payment of all sums guaranteed (all other defences being irrevocably waived). If we request, each Merchant will also execute and deliver forthwith a separate guarantee covering the same obligations as referred to in this Section in a form satisfactory to us. You agree that we and the Member may suspend the operation of the Agreement or otherwise withhold acquiring and other related services until the requested guarantee(s) is provided.

#### **16. Indemnity**

You will indemnify us and the Member and our respective Affiliates, officers, directors, employees, agents, successors and permitted assigns (collectively, the “**Indemnitees**”) from and against any and all Losses which are directly or indirectly, or in any way or in any manner whatsoever, the result of, caused by, or arise from: (A) your or your Authorized Third Party’s non-compliance with (i) the Agreement; (ii) the Operating Manual and Procedures; (iii) the Card Brand Rules and Regulations; and/or (iv) the Data Security Standards; (B) Card Brand Fines; (C) any claim made against us by a Cardholder or Card Issuer that arises, or is alleged to arise, from any Transaction; and (D) your use of any third party telecommunication services provided to you pursuant to the Agreement.

#### **17. Term and Termination**

##### **17.1 Term (including Renewal Terms)**

The Initial Term of the Agreement will begin on the Effective Date and will continue for 3 years and the Agreement will automatically renew for successive Renewal Terms of 6 months each unless any party notifies the others at least 90 days before the end of the Initial Term or Renewal Term, that it wishes to terminate the Agreement, such termination to be effective at the end of the Initial Term or Renewal Term, as the case may be. As used in the Agreement, “Term” means the Initial Term and any subsequent Renewal Terms.

##### **17.2 Termination**

###### **(a) Termination by us**

We may terminate the Agreement at any time by giving you written notice. We may also terminate or suspend operation of the Agreement at any time without prior notice, and/or take other steps we consider necessary acting in a reasonable manner, including establishing a Reserve, or take any action that is required by a Card Brand if:

- (i) you do not observe or act according to the terms and conditions of the Agreement;
- (ii) you make a representation in the Agreement (including the CAF) that is inaccurate in any way;

- (iii) bankruptcy or insolvency proceedings are commenced by or against you;
- (iv) the continued provision of services to you would pose a level of risk and/or exposure to us (including credit, operational, reputational, financial, technological, security and/or fraud risk or exposure) that we consider in our sole discretion to be unacceptable;
- (v) the Card Brand Rules and Regulations require that we and/or the Member terminate the Agreement and/or suspend processing for you;
- (vi) if applicable, you do not create and maintain the specified minimum balance of the Reserve and you fail to correct that default within 3 days after we send you notice to do so;
- (vii) you do not provide us with financial statements as required by the Agreement or you do not provide us with the required security or collateral within the timeframes requested by us;
- (viii) you fail to notify us of a Change in Your Business as required by Section 7;
- (ix) you have not used the Services for a period of 6 months or more; or
- (x) you revoke or provide notice that you intend to revoke your authorization for Pre-Authorized Debits.

If more than one Merchant is processing Transactions under the Agreement, a notice of termination or suspension delivered to any Merchant may, as determined by us, be deemed to be delivered to each Merchant and we may exercise any and all rights associated with such notice against any and all Merchants.

(b) **Termination by you**

You have the right to terminate the Agreement in accordance with the provisions of the Code of Conduct by giving us written notice within 90 days following notification by us of a Fee increase, the introduction of a new Fee, or a reduction in applicable posted interchange rates by the Card Brands the savings of which have not been passed through to you in full, unless such Fee increase or new Fee is made in accordance with your pre-determined Fee schedule, as set out in the CAF and/or Fee Disclosure Boxes (if applicable).

**17.3 Effects of termination**

(a) When the Agreement ends:

- (i) you remain responsible for paying any amount you owe us and/or the Member pursuant to the Agreement;
- (ii) the terms and conditions of the Agreement will remain in effect for any Transactions delivered to us before the termination date;
- (iii) your rights to accept Transactions, as outlined in the Agreement, to use advertising, displays and other items associated with Transactions will end;
- (iv) you will return to us at your expense any Equipment in the same condition it was in when you received it except for normal wear and tear. If any such Equipment is not returned or is returned in unacceptable condition, we will charge you for the cost of replacement; and
- (v) if required by Card Brand Rules and Regulations, we will report you on the MATCH System.

(b) Promptly upon notice of termination by either party under the Agreement we or the Member will:

- (i) establish a holdback (the "**Holdback**") in an amount sufficient to cover any potential or anticipated liabilities arising out of or relating to the Agreement or under any separate guarantee, including any Card Brand Fines, Chargebacks or any Fees owed to us or the Member pursuant to the Agreement, which may be or become payable by you pursuant to the Agreement after its termination; and
- (ii) pay you all settlement funds owing to you under the Agreement, including the Reserve, less the amount of the Holdback.

You are not entitled to repayment of any balance of the Holdback until such time as you have no further indebtedness or other obligations outstanding, anticipated or potential under the Agreement and/or under any separate guarantee to us or the Member. We and the Member

may (but are not required to) apply funds in the Holdback toward the satisfaction of any amounts which are or may become due from you pursuant to the Agreement to us or the Member. Funds in the Holdback will not bear interest. Your entitlement is only to be repaid any remaining balance of the Holdback after the full and final satisfaction of all of your indebtedness or other obligations under the Agreement and/or under any separate guarantee to us or the Member. If the Holdback is insufficient to cover such amounts, you will pay any deficiency promptly on demand.

## 18. Limitation of Liability

- (a) We and the Member make no guarantee or warranty with respect to the Services and Equipment provided pursuant to the Agreement, whether express, implied, statutory or otherwise, including any warranty of merchantability or fitness for a use for any particular purpose. Our Fees are based upon the value of the Services and Equipment we provide and the allocation of any risks for Chargebacks, Card Brand Fines, Data Compromises or any other Losses remains with you. If, notwithstanding the foregoing, we or the Member are found liable for any Losses suffered by you arising out of, or relating in any way to, the Agreement, or the Services and Equipment that we provide to you, our and the Member's liability will, in the aggregate, be limited to actual, direct, and general monetary damages in an amount not to exceed the total Fees (exclusive of all Card Brand interchange fees, assessment fees and any other fees and charges that Card Brands apply to your Transactions) paid by you under the Agreement during the 3 months prior to the time the liability arose. This limitation of liability applies regardless of the form in which any legal or equitable action may be brought against us or Member, whether under contract, tort (including negligence) or otherwise, and the foregoing will constitute your exclusive remedy.
- (b) We and the Member will not be liable for any exemplary, punitive, special, incidental, indirect or consequential damages, lost profits, lost revenues, costs, lost business opportunities, loss of goodwill or expenses arising out of or in any way relating to the Agreement, including, any Losses suffered by you for any reporting to the MATCH System or due to the failure or disruption of communications services and/or support, even if we or Member have been made aware of the possibility of such damages.
- (c) Neither us nor the Member will be liable for any default or delay in the performance of our obligations under the Agreement if such default or delay is caused, directly or indirectly, by the Card Brands, the Card Issuers, failure of telecommunications, communications or banking systems, electrical power failures, acts of God, fire, flood, strike, lockout or other labour disturbance, governmental acts or orders or restrictions, local or national emergency.

## 19. Confidential Information

You acknowledge that Confidential Information may be disclosed to you during the term of the Agreement. You will not directly or indirectly use or disclose Confidential Information other than for the purposes set out in the Agreement including compliance with Card Brand Rules and Regulations. You agree that upon the termination of the Agreement you will return all Confidential Information to us.

## 20. Privacy

- (a) The Merchant, on its own behalf and as agent and on behalf of each Applicant, hereby authorizes us to collect, store, use (including to create or otherwise derive data from), handle, reproduce, transfer, exchange, transmit or disclose to third parties (including to RBC, BMO, our Affiliates, strategic partners, agents and service providers, Card Issuers, Card Brands, credit and debt recovery agencies and similar parties connected to Card services, some of which may be located outside of Canada) ("**Process**") any financial, credit, Transactions, sales, experience, commercial and other information about the Merchant and/or the Applicant obtained in connection with the Agreement for the following purposes:
  - (i) to respond to your application and evaluate your eligibility for our Services and to provide you with and administer the Services contemplated in the Agreement;
  - (ii) to determine the Merchant's and/or the Applicant's identity including matching records or credit information;
  - (iii) to perform screenings against applicable sanctions and industry watch lists, including the

MATCH System;

- (iv) to determine the Merchant's and the Applicant's financial situation by collecting credit and related financial information from our Affiliates, strategic partners, credit agencies, other financial institutions and from references provided by the Applicant;
  - (v) to detect, investigate, prevent, reduce or otherwise address fraud, security or technical issues;
  - (vi) for reporting purposes under Card Brand Rules and Regulations, including reporting the Merchant and the Applicant on the MATCH System when required;
  - (vii) to enhance or improve our or our Affiliates' products or services generally;
  - (viii) for marketing purposes, including so that we and/or our Affiliates may determine your eligibility for and offer you additional products, services or business opportunities that may be of interest to you;
  - (ix) to perform statistical analysis, research and development activities and/or for evaluating our merchant portfolio;
  - (x) to meet legal, regulatory, audit, processing and security requirements;
  - (xi) in connection with an actual or potential sale, reorganization, consolidation, merger or amalgamation of our business; and
  - (xii) for any other purpose, if required or permitted by applicable law, or if the information has been rendered unidentifiable with respect to the Applicant, the Merchant or any other person.
- (b) The Merchant and the Applicant acknowledge that certain information obtained and Processed by us in accordance with the Agreement may constitute Personal Information and agree that any such Personal Information is also subject to our privacy policy, as it may be amended from time to time, which can be found at the following link: <https://www.moneris.com/en/Privacy-Policy>.

## 21. Intellectual Property

We retain all ownership and copyright interest in and to any intellectual property, computer programs, documentation, technology, know-how and processes developed by us and provided to you in connection with the Agreement ("**Moneris Intellectual Property**"). We grant you a non-exclusive license to use any Moneris Intellectual Property made available to you for the limited purpose of receiving the Services and exercising your rights in connection with the Agreement. This license is granted for your own use and you have no right to sub-license any Moneris Intellectual Property. You will not reverse engineer, disassemble or decompile the Moneris Intellectual Property.

## 22. Provisions Applicable to American Express Cards

The following terms and conditions apply to your acceptance of American Express Cards and the Services we offer to facilitate this (in addition to all other Terms and Conditions set out in the Agreement). Capitalized terms used in this Section but not defined in the Definitions section above have the meaning given to them in the American Express OptBlue™ Merchant Guide Canada ("**Amex Merchant Guide**") available online at: [www.americanexpress.ca/optblueguide](http://www.americanexpress.ca/optblueguide).

- (a) You agree to accept American Express Cards in accordance with the terms of the Agreement, the Amex Merchant Guide and the American Express Data Security Standards, as such terms may be amended from time to time.
- (b) You authorize us to submit Transactions to, and receive settlement from, American Express.
- (c) You agree that (i) we may disclose Transaction Data, Merchant Data, and other information about you to American Express; and (ii) American Express may use such information to perform its responsibilities in connection with the Program, promote the American Express Network, perform analytics and create reports, and for any other lawful business purposes, including commercial marketing communications purposes and important transactional or relationship communications from American Express.



- (d) You agree that American Express may otherwise use and share your information for business purposes and as permitted by Applicable Law. American Express uses reasonable administrative, technical and physical security measures to protect your information consistent with the sensitivity of the information. American Express may use the information obtained in the CAF to screen and/or monitor you in connection with Card marketing and administrative purposes.
- (e) You acknowledge that American Express may use the information obtained in the Program Merchant application at the time of setup to screen and/or monitor you in connection with American Express Card marketing and administrative purposes.
- (f) You acknowledge and agree that you: (1) may be converted from the Program to a direct American Express Card acceptance relationship with American Express if and when you become a High Charge Volume Merchant; (2) upon conversion, (i) you will be bound by American Express' then-current American Express Card Acceptance Agreement; and (ii) American Express will set pricing and other fees payable by you for American Express Card acceptance.
- (g) You agree not to assign to any third party any payments due to you under the Agreement and all indebtedness arising from Charges will be for bona fide sales of goods and services (or both) at your Establishments and free of liens, claims, and encumbrances other than ordinary sales taxes; provided, however, that you may sell and assign future Transaction receivables to us or our affiliated entities and/or any other cash advance funding source that has a commercial relationship with us or its affiliated entities, without consent of American Express.
- (h) If you are unable to resolve a Claim against American Express, or a Claim against us or any other Entity that American Express has a right to join (including Claims against us for which we have a right to seek indemnification from American Express), you agree to resolve the Claim by binding individual arbitration in the manner provided in the Amex Merchant Guide.
- (i) You may opt out of accepting American Express Cards at any time without penalty and without directly or indirectly affecting your rights to accept Cards and Other Payment Products from other Card Brands.
- (j) You must not bill or collect from any Cardmember for any purchase or payment on the American Express Card unless Chargeback has been exercised, you have fully paid for such Charge, and you otherwise have the right to do so.
- (k) You must remove American Express Licensed Marks from your website and wherever else they are displayed upon termination of the Agreement or your participation in the Program.
- (l) We may assign the Agreement with respect to American Express Card acceptance to American Express in the event of termination of our agreement with American Express.

### **23. Assigning the Agreement**

The Agreement is binding on the Parties and their successors and assigns. You acknowledge that we have entered into the Agreement and have determined the Fees based on our assessment of your credit risk and you agree that you will not assign the Agreement without our prior written consent. We and/or the Member can assign any of our rights and obligations under the Agreement by telling you about the assignment in writing.

### **24. Entire Agreement**

The Agreement, including the Card Brand Rules and Regulations, the Data Security Standards and the Operating Manual and Procedures, which are incorporated herein by reference, constitutes the entire agreement between the Parties pertaining to the subject matter of the Agreement and replaces all previous agreements, arrangements and understandings between you, us and/or the Member concerning the services we provide.

### **25. Non-Waiver of Rights and Enforcing the Agreement**

You agree that our conduct, actions or failure to enforce any of the terms and conditions of the Agreement does not waive any of our rights under the Agreement, or change your obligations under the Agreement.

## **26. Amending the Agreement**

WE CAN AMEND, RESTATE, SUPPLEMENT OR OTHERWISE MODIFY THE AGREEMENT (INCLUDING ANY OF THE SCHEDULES) AT ANY TIME BY GIVING YOU NOTICE PURSUANT TO SECTION 27 (INCLUDING BY POSTING THE AMENDED AGREEMENT ON OUR WEBSITE) EFFECTIVE ON THE DATE STATED IN THE NOTICE. YOU ACKNOWLEDGE AND AGREE THAT THE OPERATING MANUAL AND PROCEDURES, THE CARD BRAND RULES AND REGULATIONS AND THE DATA SECURITY STANDARDS MAY BE AMENDED, RESTATED, SUPPLEMENTED OR OTHERWISE MODIFIED AT ANY TIME WITHOUT PRIOR NOTICE TO YOU. YOUR CONTINUED USE OF OUR SERVICES AFTER THE EFFECTIVE DATE OF ANY AMENDMENT, RESTATEMENT, SUPPLEMENTATION OR ANY OTHER MODIFICATION TO THE AGREEMENT CONSTITUTES ACCEPTANCE OF ANY SUCH AMENDMENT, RESTATEMENT, SUPPLEMENTATION OR OTHER MODIFICATION.

## **27. Providing notice**

Any notices or other communications under the Agreement may be delivered by us and/or the Member to you by any one or more of the following methods: (i) by regular or registered mail at the address that we have on record for you; (ii) by email or fax at the email address of fax number that we have on record for you; (iii) by including them in your statements (whether electronic or on paper); (iv) by posting them on Merchant Direct or on any other form of electronic or paper reporting system that we may make available to you from time to time; or (v) by posting them on our website.

Any notice or other communication under the Agreement shall be delivered by you to us and the Member by prepaid registered mail or fax at:

Moneris Solutions Corporation/Alberta Treasury Branches/Bank of Montreal/Royal Bank of Canada  
PO Box 219, Station D  
Toronto, Ontario M6P 3J8  
Fax number: (416) 232-8353

Notices sent by regular or registered mail will be deemed to be received 5 Business Days after mailing. Notices delivered by fax or email will be deemed to be received on the date of transmission if it is a Business Day. If not received on a Business Day or during normal business hours, then notices delivered by fax or email will be deemed to be received on the next Business Day following the transmission thereof. Notices delivered by including them in your statements or by posting them on Merchant Direct or other electronic reporting system or by posting them on our website will be deemed to be received on the day they are made available to you.

## **28. For residents of Quebec**

It is agreed that it is the express wish of the Parties that the Agreement and any related documents be drawn up and executed in English. *Il est la volonté expresse des Parties que cette convention et tous les documents s'y rattachant soient rédigés en anglais.*

## **29. Survival**

Notwithstanding anything to the contrary contained herein, the rights and obligations of the Parties pursuant to Sections 1 (to the extent applicable), 2(f), 4, 5, 8, 11, 12, 15, 16, 17.3, 18, 19, 20, 21, 27, 29, 30 and 31 will survive termination or expiration of the Agreement.

## **30. Severability**

If any covenant, section or provision, or portion thereof, of the Agreement is determined to be void or unenforceable such void or unenforceable covenant, section or provision, or portion thereof, is hereby conceded to be severable from the balance of the Agreement; such a determination shall not, in any event, affect or impair the validity of the balance of the covenants, section or provision, nor shall it affect or impair the validity of any other covenant, section or provision herein contained.

## **31. Governing Law**

The Agreement will be governed by the laws of the Province of Ontario. The Parties agree that the courts of the province of Ontario will have exclusive jurisdiction over any matters arising from the Agreement. Each party hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario.