



# **Terms of Service**

**August 2017**

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These Terms of Service (TOS) and the other portions of the Agreement govern the Merchant’s participation in the Program. The TOS is incorporated into and made part of the Agreement and the signature by an authorized representative of the Merchant on the Merchant Application, or the transmission of a Transaction Receipt or other evidence of a Transaction, shall be the Merchant’s acceptance of and agreement to abide by the terms and conditions contained in the Agreement. No strikeover of the preprinted text of the TOS shall be effective. Merchant acknowledges that it has received, understands, and agrees to be bound by the Agreement

## TERMS OF SERVICE (TOS)

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### 1. DEFINITIONS. Definitions used within this TOS are listed alphabetically:

- a. **Agreement:** The TOS, including the Merchant Application, the Merchant Operating Guide, the Electronic Check Service Merchant Operating Guide (if applicable), any Merchant Agreement or Merchant Processing Agreement, and any other guides or manuals provided to Merchant from time to time, and all additions to, amendments and modifications of, and all replacements to any of them, as applicable.
- b. **Authorization Code:** The code sent by the Issuer in response to an Authorization request that indicates whether the Transaction is approved. Responses may include: “Approved,” “Declined,” “Declined Pick-Up,” or “Referral” (“Call Auth”).
- c. **Canadian Payments Association (CPA):** The national association that establishes standards, rules, and procedures and maintains a funds transfer system to enable depository financial institutions to exchange electronic payments.
- d. **Cardholder:** (i) The individual in whose name a Payment Device has been issued; and (ii) any individual who possesses and uses a Payment Device and who purports to be the person in whose name the Payment Device was issued or whose signature appears on the Payment Device as an authorized user.
- e. **Cardholder Data:** One or more of the following data elements pertaining to a Cardholder’s account: card number, Cardholder name (if applicable), card account activity, Cardholder account balance, and/or such other data applicable to the Merchant’s card program.
- f. **Cardholder Information Security Program (CISP):** Data security regulations to protect Cardholder account data and other data security best practices. The exact requirements for CISP can be found at [www.visa.com/cisp](http://www.visa.com/cisp).
- g. **Chargeback:** A Transaction disputed by a Customer or Issuer pursuant to the Payment Network Regulations. “Chargeback” means (i) a sales Transaction disputed by a Customer. (ii) the face amount of any Item that is returned by the Drawee Bank to Canmor unpaid and that is ineligible for resubmission to the Drawee Bank, including any Item returned for non-sufficient or uncollected funds after the third presentment; and (iii) for all Service Levels, an Item that is not in compliance with Merchant’s obligations, representations and warranties under the Agreement or the TOS.
- h. **Confidential Information:** All information or items proprietary to Canmor or Member, of which the Merchant obtains knowledge or access as a result of the Merchant’s relationship with Canmor and Member, including, but not limited to, the following types of information and other information of a similar nature (whether or not reduced to writing): scientific, technical, or business information, product makeup lists, ideas, concepts, designs, drawings, techniques, plans, calculations, system designs, formulae, algorithms, programs, software (source and object code), hardware, manuals, test procedures and results, identity and description of computerized records, identity and description of suppliers, customer lists, processes, procedures, trade secrets, “know-how,” marketing techniques and material, marketing and development plans, price lists, pricing policies, and all other financial information.
- i. **Customer:** A client of Merchant who elects to conduct a payment Transaction with Merchant through presentation of a Payment Device (including a Cardholder).
- j. **Debit Card:** A card bearing the Interac logo issued by a Canadian Financial Institution, which may be used to purchase goods and services from Merchant or to pay an amount due to Merchant by an electronic debit to the Cardholder’s designated deposit account.
- k. **Demand Deposit Account (DDA):** The commercial checking account at a financial institution acceptable to Canmor and Member designated by Merchant to facilitate payment for Transactions, Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement.
- l. **Guarantor:** A Person that executes a Personal Guaranty for the benefit of Canmor and Member.
- m. **Interac:** Interac Association.
- n. **Interac Direct Payment:** The service provided by Interac to permit Customers to pay for goods and services by debiting money directly from their accounts using a POS Device equipped with a PIN pad with PIN verification.
- o. **Issuer:** The financial institution or other entity that issued the Debit Card to the Cardholder.
- p. **Member:** A registered member of Interac Association authorized to access the Interac payment network for the purposes of processing debit card payment transactions.
- q. **Merchant:** The business entity indicated on the Merchant Application that provides goods and/or services to Customers, or that accepts payments from Customers.
- r. **Merchant Agreement (Merchant Processing Agreement):** Any agreement that Merchant has entered into for Processing Services, which agreement is either with Canmor or another entity that, directly or indirectly, transferred its rights under such agreement to Canmor.
- s. **Merchant Application:** The Merchant Application and any additional document containing information regarding Merchant’s business that is submitted to Canmor and Member in connection with Merchant’s application for Processing Services, including any additional location form(s) and any documents submitted by Merchant as a part of the bid process, if applicable.

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- t. **Payment Device:** Any device used for the purpose of initiating and completing a payment transaction including the acceptance of a cardholder Personal Identification Number for the purpose of debiting or crediting the cardholder's bank account.
- u. **Payment Network:** (i) Interac and the Interac Direct Payment service; and (iii) any other organization or association that hereafter authorizes Canmor and/or Member to authorize, capture, and/or settle Transactions effected with Debit Cards, and any successor organization or association to any of the foregoing.
- v. **Person:** Any individual, firm, corporation, business trust, partnership, governmental agency or authority, or other entity and shall include any successor (by merger or otherwise) of such entity.
- w. **Personal Guaranty:** Any written guaranty of Merchant's duties and obligations to Canmor and Member by a Person that is given in connection with the Agreement including, without limitation, as part of this TOS, the Merchant Application, any Merchant Agreement or Merchant Processing Agreement, or any other document signed by the Person in favor of Canmor and Member.
- x. **PIN:** A Personal Identification Number that must be entered by a Cardholder in order to complete an Interac debit or EMV credit card transaction.
- y. **POS Device:** A terminal, software, or other point-of-sale device at a Merchant location that conforms with the requirements established from time to time by Canmor and the applicable Payment Network.
- z. **Processing Services:** The Payment Device processing services and other related products and services received by Merchant pursuant to the Agreement.
- aa. **Retrieval Request:** A request initiated by a Cardholder or Issuer that requires the Merchant to produce a legible copy of the Cardholder Transaction Receipt within a specified period of time.
- bb. **Transaction:** Any action by a Customer using a Payment Device and a Merchant that results in activity on the Cardholder's account (e.g., payment, purchase, refund, return, or debit).

### 2. RULES OF CONSTRUCTION.

Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement. Singular terms shall include the plural, and vice versa, unless the context otherwise requires. The words "hereof," "herein," and "hereunder," and words of similar import when used in the TOS shall refer to the TOS and not to any particular provision of the TOS. The word "day" shall mean "calendar day," unless specifically stated otherwise. In the event of a conflict between the terms of Section (A) – General Provisions, and any subsequent Section of the TOS, the terms of the subsequent Section shall prevail.

### 3. ACCEPTANCE OF PAYMENT DEVICES.

Merchant shall determine in accordance with the Payment Network Regulations and the Agreement which types of Payment Devices it will agree to accept as a form of payment from its Customers. The terms and conditions for the acceptance of the applicable Payment Devices and Merchant's use of the Payment Device Processing Services are set forth in the Agreement.

### 4. TRANSACTIONS.

- a. **Merchant Compliance.** Merchant must comply with all the requirements under the Agreement. Merchant must also comply with the procedures set forth in the MOG and any other guides, manuals, or rules provided in writing to Merchant by Canmor from time to time.
- b. **Settlement of Transactions.**
  - i. **Deposits.** Merchant agrees that the Agreement is a contract for the advance of credit to Merchant within the meaning of Section 11.01(b) of the *Companies' Creditors Arrangement Act* (Canada) and within the meaning of Section 65.1(4)(b) of the *Bankruptcy and Insolvency Act* (Canada). Subject to this Section, all funds evidenced by Transaction Receipts complying with the terms of the agreement and the payment Network Regulations will be deposited to the DDA and will provide Merchant such funds (less recoupment of any Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement).
  - ii. **Provisional Credit.** Merchant acknowledges that all credits for funds provided to it are provisional and subject to reversal in the event that Canmor and Member do not receive payment of corresponding settlement amounts from the Payment Networks. Merchant further acknowledges that all credits are subject to adjustments for inaccuracies and errors (including rejects) and Chargebacks in accordance with the Agreement and the Payment Network Regulations, whether or not a Transaction is charged back by the Issuer or Customer. Merchant authorizes Canmor or Member to initiate reversal or adjustment (debit or credit) entries and to initiate or suspend such entries

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in accordance with the Agreement as may be necessary to grant or reverse provisional credit for any Transaction. Further, Canmor may delay Merchant-issued Customer credits for up to five (5) business days for accounting verification. Customer credits issued by Merchant to PIN-Debit Cards will not be subject to this delay. Member or Canmor may elect to grant conditional credit for individual or groups of Transaction Receipts. Final credit for Transaction Receipts will be granted within Member's and Canmor's sole discretion.

- iii. **Original Transaction Receipts.** Under no circumstances will Canmor or Member be responsible for processing returns, refunds, or adjustments related to Transactions not originally processed by Canmor and Member.
- c. **Processing Limits.** Canmor may impose a cap on the dollar amount of Transaction Receipts that it will process for Merchant as indicated on the Merchant Application. This limit may be changed by Canmor from time to time, without prior notice to Merchant.
- d. **Chargebacks.** Merchant is fully liable to Canmor and Member for all Transactions returned to Canmor or Member for whatever reason including all Chargebacks. Merchant will pay Canmor and Member for all Chargebacks. Merchant agrees to accept for Chargeback, and will be liable to Canmor and Member in the amount of any Transaction for which the Customer or Issuer disputes the validity of the Transaction for any reason. Merchant authorizes Canmor and Member to offset from funds due Merchant for Transaction activity or to debit the DDA, or any other account held at Member or at another financial institution for the amount of all Chargebacks including, as applicable, any currency fluctuations. Merchant will fully cooperate with Canmor and Member in complying with the Payment Network Regulations regarding all Chargebacks. Guarantors are personally liable to Canmor Member for all Chargebacks.

### 5. DEMAND DEPOSIT ACCOUNT (DDA).

- a. **DDA.** Merchant will establish and maintain one or more DDAs to facilitate payment for Transactions. Merchant will maintain sufficient funds in the DDA to accommodate all Transactions contemplated by the Agreement and all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and other payments due under the Agreement. Merchant irrevocably authorizes Canmor, Member, and their respective authorized vendors and agents who provide services under the Agreement, to initiate debit and credit entries to the DDA or any other account maintained by Merchant at any financial institution, in order to make payments to or collect payments from Merchant due under the Agreement. The foregoing authorizations will remain in effect after termination of the Agreement until all of Merchant's obligations to Canmor and Member have been paid in full. Merchant also authorizes Canmor's or Member's vendors or agents to debit the DDA for any fees due to such vendors or agents under the Agreement. Merchant must obtain prior consent from Member and Canmor to change the DDA. If Merchant does not get that consent, Canmor or Member may immediately and without notice terminate the Agreement and may take any other action either of them deems necessary in their discretion. Canmor and Member have the right to rely upon written instructions submitted by Merchant requesting changes to the DDA. In the event Merchant changes the DDA, the debit and credit authorization established hereunder will apply to the new account and Merchant shall provide Canmor and Member such information regarding the new DDA as they deem necessary to effect payments to and from the new DDA. It may take Canmor up to ten (10) business days after Canmor's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA. Merchant may request from Canmor written confirmation of Canmor's and Member's consent to change the DDA. If the DDA is maintained with Member, Member will deposit all funds evidenced by Transaction Receipts to the DDA. Canmor and Member have the right to delay, within their discretion, crediting the DDA with funds evidenced by submitted Transaction Receipts. To the extent required, Merchant authorizes Member or Canmor to initiate reversal or adjustment entries and initiate or suspend such entries as may be necessary to grant Merchant provisional credit for any entry. Member will make deposits to the DDA pursuant to the Agreement. To the extent required, Merchant authorizes and appoints Member to act as its agent to collect Transaction amounts from the Issuer, the Customer or the Customer's financial institution. Member, in its sole discretion or at Canmor's direction, may grant Merchant provisional credit for Transaction amounts in the process of collection, subject to receipt of final payment by Member and Canmor and subject to all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement.
- b. **Pre-Authorized Debits (PADs).** Merchant authorizes Member, Canmor, and their respective vendors and agents to initiate debit and credit entries to the DDA, the Reserve Account, or any other account maintained by Merchant at any institution that is a member of the CPA, all in accordance with the Agreement. Merchant agrees that any withdrawal by Member, Canmor and their respective vendors and agents in accordance with the Agreement are

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PADs for business purposes, as defined under Rule H1 of the CPA. **Merchant hereby waives the right to receive advance notice from Member, Canmor and their respective vendors and agents of any and all such debits.** This authorization will remain in effect after termination of the Agreement and until all of Merchant's obligations to Canmor and Member have been paid in full. If Merchant changes the DDA, this PAD authorization will apply to the new account and Merchant shall provide Canmor and Member in writing such information regarding the new DDA as they deem necessary. It may take Canmor up to ten (10) business days after Canmor's receipt of a written notice from Merchant to reflect in its system any change to Merchant's DDA. If Merchant changes the DDA, Merchant agrees that it is responsible for all costs incurred by Member and/or Canmor in connection with Merchant's decision to change the DDA. Merchant may revoke the PAD authorization upon thirty (30) days' prior written notice to Canmor, but any such revocation shall constitute a material breach of the Agreement. Merchant may obtain a sample cancellation form, as well as further information on Merchant's right to cancel a PAD authorization by contacting Merchant's financial institution or by visiting [www.cdnpay.ca](http://www.cdnpay.ca). Merchant has certain recourse rights if any debit does not comply with the Agreement. For example, Merchant has the right to receive reimbursement for any debit that is not authorized or is not consistent with this PAD Agreement. To obtain more information on Merchant's recourse rights, Merchant may contact its financial institution or visit [www.cdnpay.ca](http://www.cdnpay.ca).

- c. **Asserted Errors.** It is the responsibility of Merchant to reconcile the statements regarding Transaction activity received from Canmor, any Payment Network, and any third party vendors with the statements Merchant receives for Merchant's DDA. Merchant must promptly examine all statements relating to the DDA and immediately notify Canmor and Member in writing of any errors in the statement Merchant received from Canmor. Merchant's written notice must include: (i) Merchant name and account number; (ii) the dollar amount of the asserted error; (iii) a description of the asserted error; and (iv) an explanation of why Merchant believes an error exists and the cause of it, if known. That written notice must be received by Canmor within forty-five (45) days after the month end date on the statement containing the asserted error. If Merchant fails to provide such notice to Canmor within said forty-five (45) days, Canmor and Member shall not be liable to Merchant for any errors Merchant asserts at a later date. Merchant may not make any claim against Member or Canmor for any loss or expense relating to any asserted error for sixty (60) days immediately following Canmor's receipt of Merchant's written notice. During that sixty (60) day period, Canmor will be entitled to investigate the asserted error, and Merchant shall not incur any cost or expense in connection with the asserted error without notifying Canmor.
- d. **Depository Institution.** Merchant authorizes its depository institution to grant Canmor and/or Member access to any and all information or records regarding the DDA. Merchant authorizes Canmor and/or Member to direct the depository institution to hold funds in the DDA in an amount which Canmor and/or Member, in their respective discretion, either individually or collectively, deem sufficient to fully protect Canmor's and Member's rights under the Agreement or to block or restrict Merchant's or others' access to funds in the DDA (whether or not such funds are specifically related to any previous deposit for any Transaction Receipt). Merchant directs the depository institution to immediately comply with any such direction from Canmor or Member.
- e. **Indemnity.** Merchant will indemnify and hold harmless Canmor and Member for any action they take against the DDA pursuant to the Agreement. Merchant will also indemnify and hold harmless the depository institution at which it maintains its DDA for acting in accordance with any instruction from Canmor and/or Member regarding the DDA.

## 6. SECURITY INTERESTS

- a. **Security Interests.**
  - i. **Security Agreement.** The Agreement constitutes a security agreement under the Uniform Commercial Code. Merchant grants to Canmor and Member a security interest in and lien upon (and in Quebec, a hypothec on): (a) all funds at any time in the Reserve Account or DDA, regardless of the source of such funds, and (b) all funds underlying present and future Transaction Receipts; and (c) any amount which may be due to Merchant under the Agreement, including, without limitation, all rights to receive any payments or credits under the Agreement (collectively, the "Secured Assets"). Merchant agrees to provide other security to Canmor and Member, upon request, to secure its obligations under the Agreement. These security interests and liens (and hypothecs) will secure all of Merchant's obligations under the Agreement and any other agreements now existing or later entered into between Merchant and Canmor and/or Member including Merchant's obligation to pay any amounts due and owing to Member or Canmor. Canmor and Member may execute this security interest (and hypothecs), without notice or demand of any kind, by making an immediate withdrawal or by restricting Merchant's access to the Secured Assets.

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- ii. **Perfection.** Upon request of Canmor or Member, Merchant will execute one (1) or more control agreements or other documents to evidence or perfect this security interest (and hypothec). Merchant represents and warrants that no other person or entity has a security interest (or hypothec) in the Secured Assets. With respect to such security interests and liens (and hypothecs), Canmor and Member will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity. Merchant will obtain from Canmor and Member written consent prior to granting a security interest (or hypothec) of any kind in the Secured Assets to a third party. Merchant agrees that this is a contract of recoupment and Canmor and Member are not required to file a motion for relief from a bankruptcy action automatic stay to realize any of the Secured Assets. Nevertheless, Merchant agrees not to contest or object to any motion for relief from the automatic stay filed by Canmor or Member. Merchant authorizes and appoints Canmor as Merchant's attorney in fact to sign Merchant's name to any control agreement used for the perfection of any security interest or lien (or hypothec) granted hereunder.
- b. **Remedies Cumulative.** The rights conferred upon Member and Canmor in this Section are not intended to be exclusive of each other or of any other rights and remedies of Member and Canmor under the Agreement, at law or in equity. Rather, each and every right of Member and Canmor under the Agreement, at law or in equity is cumulative and concurrent and in addition to every other right.

### 7. FEES; OTHER AMOUNTS OWED; TAXES.

- a. **Fees.** Merchant will pay Member and Canmor fees for services, supplies, and equipment in accordance with the Agreement and any additional application or setup form(s). Such fees will be calculated and debited from the DDA once each day or month for the previous day's or month's activity as applicable, or will be deducted from the funds due Merchant under the Agreement. In addition, Merchant will pay Canmor at its standard rates for research including, but not limited to, research required responding to any third party or government subpoena, levy, or garnishment on Merchant's account. Canmor may adjust the fees in accordance with Section 18.m.below.
- b. **Other Amounts Owed.** Merchant will immediately pay Canmor or Member any amount incurred by Canmor or Member attributable to the Agreement, including, without limitation, Chargebacks, returns, adjustments, fees, fines, penalties (including all fines and penalties assessed by the Payment Networks as a result of Merchant's Transaction processing), assessments from the Payment Networks, Leased Equipment payments and any other payments due under the Agreement. Canmor or Member may offset these amounts from funds otherwise owed by Canmor or Member to Merchant or may debit these amounts from Merchant's DDA, and in the event such offset or debit does not fully reimburse Canmor or Member for the amount owed, Merchant will immediately pay Canmor or Member such amount. Canmor will charge interest, as allowed by Law, on all uncollected items that are more than thirty (30) days past due.
- c. **Taxes.** Merchant is also obligated to pay all taxes and other charges imposed by any governmental authority on the goods and services provided under the Agreement. If Merchant is a tax-exempt entity, Merchant will provide Canmor and Member with an appropriate certificate of tax exemption.

### 8. ACCURACY OF INFORMATION; INDEMNIFICATION; LIMITATION OF LIABILITY.

- a. **Accuracy of Information.** Merchant represents and warrants to Member and Canmor that all information provided to Canmor in the Merchant Application, in the bid process if applicable, or otherwise in the Agreement is true and complete and properly reflects the business, financial condition and principal partners, owners, officers, or ownership of Merchant. Merchant must promptly notify Canmor in writing of any changes to such information, including, without limitation, any additional location or new business at which Merchant desires to accept Payment Devices, the identity of principals and/or owners, the form of business organization (i.e., sole proprietorship, partnership, etc.), type of goods and services provided, and how Transactions are completed (i.e., by telephone, mail, electronic commerce, or in person at Merchant's place of business). The notice must be received by Canmor at least ten (10) business days prior to the change. Merchant will provide any additional information requested by Canmor within a reasonable time. Canmor has the right to rely upon written instructions submitted by Merchant to request changes to the Merchant's business information. Merchant will defend, indemnify, and hold harmless Member and Canmor for all losses and expenses incurred by Member or Canmor arising out of any such change, whether or not reported to Canmor, or Merchant's failure to provide requested information. Merchant will not submit unlawful or illegal Transactions or Transactions for processing to Canmor or Member for any businesses, products, or methods of selling other than those set forth in the Merchant Application at the time Merchant applies for services without the prior written consent of Canmor. Canmor may immediately terminate the Agreement upon notification by Merchant

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of a change to the information in the Merchant Application. Merchant authorizes Canmor and Member to contact credit reporting agencies and Merchant's creditors to make inquiries and obtain reports regarding Merchant's credit standing upon Canmor's or Member's receipt of the Merchant Application.

- b. Indemnification.** Merchant will be liable for and indemnify, defend, and hold harmless Canmor, Member and their respective employees, officers, directors, and agents against all claims, including claims made by third parties, losses, damages, liabilities or expenses arising out of the Agreement and for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member and/or Canmor in the enforcement of the Agreement, including those resulting from any Transaction processed under the Agreement or any breach by Merchant of the Agreement and those related to any Bankruptcy Proceeding.
- c. Limitation of Liability.** Merchant acknowledges that Canmor's and Member's fees for the Processing Services provided to Merchant by Canmor and Member are very small in relation to the funds advanced to Merchant for Transactions and consequently Canmor's and Member's willingness to provide these services is based on the liability limitations contained in the Agreement. Therefore, in addition to greater limitations on Canmor's or Member's liability that may be provided elsewhere, any liability of Canmor and Member under the Agreement, whether to Merchant or any other party, whatever the basis of the liability, will not exceed, in the aggregate, an amount equal to the fees paid by Merchant during the last three (3) months. In no event will Canmor, Member, or their agents, officers, directors, or employees be liable for indirect, exemplary, punitive, special, or consequential damages.
- d. Performance.** Canmor and Member will perform all services in accordance with the Agreement. Canmor makes no other warranty, express or implied, regarding the services, and nothing contained in the Agreement will constitute such a warranty. **Canmor and Member disclaim all implied warranties, including those of merchantability and fitness for a particular purpose.** Neither Canmor nor Member shall be liable for any failure or delay in its performance of the Agreement if such failure or delay arises for reasons beyond the control of Canmor or Member and without the fault or negligence of Canmor or Member.

### 9. REPRESENTATIONS AND WARRANTIES.

Merchant represents and warrants to Canmor and Member as of the time the Agreement is effective, and reaffirm to Canmor and Member each time a Transaction is effected during the Initial Term or any Renewal Term of the Agreement, the following:

- a. Organization.** Merchant is a corporation, company, limited liability company, unlimited liability company, limited liability partnership, limited partnership, general partnership, business trust, association or sole proprietorship validly existing and organized federally organized in Canada or in a province or territory of Canada, as applicable.
- b. Corporate Power.** Merchant and the persons signing the Agreement have the power to execute and perform the Agreement. Merchant represents and warrants that the person executing the Agreement is duly authorized to bind Merchant and each affiliated entity identified in the Agreement to all provisions of the Agreement and that such person is authorized to execute any document and to take any action on behalf of Merchant which may be required by Canmor, now or in the future. Further, Merchant represents and warrants that signing and/or performing in accordance with the Agreement will not violate any Law, or conflict with any other agreement to which Merchant is subject.
- c. No Litigation.** There is no action, suit, or proceeding pending, or to Merchant's knowledge, threatened which if decided adversely would impair Merchant's ability to carry on Merchant's business substantially as now conducted or which would adversely affect Merchant's financial condition or operations. Merchant has never (i) been placed on the MasterCard MATCH™ system (formerly known as the Combined Terminated Merchant File), (ii) been named to the Consortium Merchant Negative File maintained by Discover, or (iii) been placed on or named to any other negative or terminated merchant file of any other Payment Network, or, if Merchant has, Merchant has disclosed that fact to Canmor in writing.
- d. Transactions.** All Transactions are bona fide. No Transaction involves the use of a Payment Device for any purpose other than the purchase of goods or services from Merchant or a return or adjustment related to such purchase. Merchant will not submit unlawful or illegal Transactions. Merchant has all power and authority to provide all Customer information, Cardholder Data and Transaction information that Merchant provides to Canmor and



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Member. No Transaction involves a Customer obtaining cash from Merchant unless allowed by the Payment Network Regulations and agreed to in writing with Canmor.

- e. **Compliance with Laws and Regulations.** Merchant will comply with all federal and provincial Laws and Payment Network Regulations.
- f. **Business Use.** Merchant is obtaining and using the Processing Services from Canmor for business purposes only and to facilitate lawful business Transactions between Merchant and Merchant's Customers. Merchant will not submit Transactions for processing to Canmor or Member for any businesses, materially different products, or methods of selling other than those set forth in the Merchant Application without the prior written consent of Canmor. Merchant also acknowledges that the DDA into which debits and credits are made is being used for lawful business purposes only.
- g. **Responsibility for Actions.** Merchant is responsible for any violations of the Agreement that result from the actions of or failure to act by Merchant's officers, directors, employees, agents, Value Added Servicers, business invitees, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to information related to Transactions from Merchant or access to systems under Merchant's control.

### 10. AUDIT AND INFORMATION.

- a. **Audit.** Merchant authorizes Canmor and Member to perform an audit of its business to confirm compliance with the Agreement. Merchant will obtain and submit a copy of an audit from a third party acceptable to Canmor of the financial, physical security, information security, and operational facets of Merchant's business at its expense when requested by Canmor or Member. Further, Merchant acknowledges and agrees that the Payment Networks have the right to audit Merchant's business to confirm compliance with the Payment Network Regulations.
- b. **Information.**
  - i. **Authorizations.** Merchant authorizes Canmor and Member to make, from time to time, any business and personal credit or other inquiries they consider necessary to review the Merchant Application or continue to provide services under the Agreement. Merchant also authorizes any person or credit reporting agency to compile information to answer those credit inquiries and to furnish that information to Canmor.
  - ii. **Financial Information.** Upon the request of either Canmor or Member, Merchant will provide Canmor and Member audited financial statements prepared by an independent certified public accountant selected by Merchant. Merchant further agrees to provide to Canmor and Member such other information regarding Merchant's financial condition as Canmor and/or Member may request from time to time. Within one hundred twenty (120) days after the end of each fiscal year, Merchant will furnish Canmor or Member, as requested, a financial statement of profit and loss for the fiscal year and a balance sheet as of the end of the fiscal year.
  - iii. **Merchant Information.** Merchant agrees that any information about Merchant or any of its principals, affiliates or agents that is provided to Canmor or Member on the Merchant Application or otherwise obtained by Canmor or Member in connection with the Agreement may be: (i) used by Canmor and Member, and their respective affiliates, agents and referral partners, (a) in order to provide the Processing Services and related functions to Merchant and to respond to any further application for services, or (b) for administrative purposes; (ii) disclosed and shared for reporting purposes to credit rating agencies, under the Payment Network Regulations, to Issuers and to the financial institution where the DDA is maintained; (iii) used or disclosed in the course of any actual or potential sale, reorganization or other change to Canmor's or Member's business; (iv) collected, used and disclosed as required or permitted by Law (e.g., for tax reporting or in response to a subpoena); and (v) retained for such periods of time as required by Canmor and Member to perform their obligations and exercise their rights under the Agreement.

11. **FRAUD MONITORING.** Merchant is solely responsible for monitoring its Transactions and the actions of its officers, directors, employees, agents, business invitees, third party vendors, including Value Added Servicers, and those of any other Person who, with or without Merchant's consent or cooperation, obtains access to Merchant's Transactions, for fraudulent or other suspicious activity. Canmor and Member are under no duty to monitor Merchant's transactions for fraudulent or other suspicious activity.

12. **BUSINESS CONTINUITY.** Merchant is solely responsible for developing and maintaining a disaster recovery plan. Merchant should test the operation of such plan, or parts thereof, on a periodic basis to ensure its effectiveness in

providing disaster recovery capability to Merchant. Merchant is solely responsible for all Transactions and Transaction Receipts until such time as the Transaction Receipts have been received and validated by Canmor. Merchant will maintain sufficient "backup" information and data (e.g., Transaction Receipts or detailed reporting) with respect to Transactions in order to reconstruct any information or data loss due to any system malfunction. Neither Canmor nor Member has a duty to recreate lost Transactions.

- 13. PERSONAL GUARANTY.** As a primary inducement to Canmor and Member to enter into the Agreement and in consideration of the services and accommodations of any kind given or continued at any time and from time to time by Canmor or Member to or for the benefit of Merchant, the designated Guarantor(s), jointly and severally, and in Quebec solidarily, unconditionally and irrevocably, guarantee the continuing full and faithful payment and performance by Merchant of all duties, debts, liabilities and obligations of Merchant to Canmor or Member, whether present or future, direct or indirect, absolute or contingent, matured or not, at any time owing or remaining unpaid by Merchant to Canmor or Member in any currency, and wherever incurred, and all interest, fees, commissions and legal and other costs, charges and expenses owing or remaining unpaid by Merchant to Canmor or Member in any currency pursuant to the Agreement, as the same may be amended by either of them from time to time, with or without notice (collectively, the "Obligations"). The Guarantor(s) also unconditionally agrees that, if Merchant does not unconditionally and irrevocably pay any Obligations when due and those Obligations are not recoverable from the Guarantor(s) for any reason under the guarantee set forth above, the Guarantor(s) shall indemnify Canmor and Member immediately on demand against any cost, loss, damage, expense or liability suffered by Canmor or Member as a result of Merchant's failure to do so. The liability of the Guarantor(s) hereunder is unlimited. No act or thing, except the indefeasible and full payment and discharge in cash of all of the Obligations, which but for this provision could act as a release or impairment of the liability of the Guarantor(s), shall in any way release, impair, or affect the liability of the Guarantor(s). The Guarantor(s) waives any and all defenses of Merchant pertaining to the Obligations, any evidence thereof, and any security therefore, except the defense of discharge of the Obligations by full and indefeasible payment in cash. Guarantor's(s') liability to pay or perform the Obligations shall arise immediately after demand has been made in writing on Guarantor(s). Guarantor(s) understands further that Canmor and/or Member may proceed directly against Guarantor(s) without first exhausting their respective remedies against Merchant or any other person or entity responsible therefore or any security held by Canmor, Member, or Merchant. The Guarantor(s) waives: (i) notice of acceptance of this Personal Guarantee and of the creation and existence of the Obligations; (ii) presentment, demand for payment, notice of dishonor, notice of non-payment, and protest of any instrument evidencing the Obligations; (iii) all other demands and notices to the Guarantor(s) or any other person and all other actions to establish the liability of the Guarantor(s); (iv) without limiting in any way any other waivers of defenses set out herein, any and all defenses available at equity or common law to the fullest extent permitted under applicable law; and (v) **the right to trial by jury in action in connection with this Personal Guarantee.** Guarantor(s) agrees that this is a continuing guarantee and that Guarantor's(s') liability under this Personal Guarantee will not be discharged, affected or released by: (a) any variation, renewal, extension or replacement of the Agreement, other agreements or any security (including any other guarantees) held by Canmor or Member; (b) any extension of time or other indulgence given to Merchant or others under the Agreement or any security; (c) any delay or refusal by Canmor to require or enforce payment of the Obligations or any security; (d) the taking, non-perfecting, or giving up of any security or by any dealings with Merchant or others respecting the Obligations, the Agreement or any security; (e) the death or legal incapacity of the Guarantor(s) or the dissolution, amalgamation, other fundamental change, death or legal incapacity, as the case may be, of Merchant; or (f) any event which results in Merchant not being under a legal obligation to make any payment or perform any obligation under the Agreement. Guarantor(s) renounces the benefit of discussion and division. This Personal Guarantee will bind all heirs, administrators, estate trustees, representatives, permitted successors, and assigns of Guarantor(s), and may be enforced by or for the benefit of any successors in interest to Canmor or Member. Guarantor(s) understands that the inducement to Canmor and Member to enter into the Agreement and give or continue services and accommodations of any kind to or for the benefit of Merchant, is consideration for the Personal Guarantee and that each Personal Guarantee remains in full force and effect even if the Guarantor(s) receives no additional benefit from the Personal Guarantee. **Guarantor hereby authorizes any credit reporting agency or bureau to furnish Canmor and Member upon request with a credit bureau report that relates to the Guarantor.** To the extent that any limitation period applies to any claim for payment of obligations or remedy for enforcement of obligations under this Personal Guarantee, each Guarantor agrees that: (a) any limitation period is expressly excluded and waived entirely if permitted by applicable law; (b) if a complete exclusion and waiver of any limitation period is not permitted by applicable law, any limitation period is extended to the maximum length permitted by applicable law; (c) any limitation period applying to this Personal Guarantee expressed to be payable on demand shall not begin before an express demand for payment of the relevant obligations is made in writing by Canmor or Member to the Guarantor; (d) any applicable limitation period shall begin afresh upon any payment or other acknowledgment by the Guarantor of its obligations; and (e) each of this Personal Guarantee and the Agreement is a "business agreement" as defined in the Limitations Act, 2002 (Ontario) if that Act applies to it. This Personal Guarantee

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has been negotiated by the Guarantor or reviewed by the Guarantor with the benefit of independent legal counsel and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply to the construction or interpretation of this Personal Guarantee.

### 14. THIRD PARTIES.

- a. **Products or Services.** Merchant may desire to use a Value Added Servicer to assist Merchant with its Transactions. Merchant shall not utilize any such third parties unless Merchant has disclosed such use to Canmor previously in writing, and unless such Value Added Servicer is fully compliant with all Laws and Payment Network Regulations. Any Value Added Servicer used by Merchant must be registered with the Payment Networks prior to the performance of any contracted services on behalf of Merchant. Further, as between the parties to the Agreement, Merchant will be bound by the acts and omissions of any Value Added Servicer and Merchant will be responsible for compliance by such Value Added Servicer with all Laws and Payment Network Regulations. Merchant will indemnify and hold harmless Canmor and Member from and against any loss, cost, or expense incurred in connection with or by reason of Merchant's use of any third parties, including Value Added Servicers. Neither Canmor nor Member is responsible for any Value Added Servicer, nor are they responsible for any Transaction until Canmor receives data for the Transaction in the format required by Canmor.
- b. **Use of POS Devices Provided by Others.** In addition to the foregoing, if Merchant uses a Value Added Servicer for the purposes of data capture and/or authorization, Merchant agrees: (i) that the third party providing such services will be Merchant's agent in the delivery of Transactions to Canmor and Member via a data processing system or network compatible with Canmor's; and (ii) to assume full responsibility and liability for any failure of that third party to comply with applicable Laws and the Payment Network Regulations or the Agreement. Neither Member nor Canmor will be responsible for any losses or additional fees incurred by Merchant as a result of any error by a third party agent or by a malfunction in a third party POS Device. Neither Canmor nor Member is responsible for any Transaction until Canmor receives data for the Transaction in the format required by Canmor.

### 15. TERM AND TERMINATION.

- a. **Term.** Unless terminated as set forth below, the Agreement will remain in effect for a period of five (5) years ("Initial Term") following the date of acceptance of the Merchant Application by Canmor and Member, which date shall be the date upon which the Agreement becomes effective. Thereafter, the Agreement will renew for successive one (1) year terms ("Renewal Term") unless terminated as set forth below. If Merchant processes Transactions beyond the Initial Term or Renewal Term, then the terms of the Agreement shall govern such Transaction processing.
- b. **Termination.**
  - i. **Merchant.**
    - 1. The Agreement may be terminated by Merchant effective at the end of the Initial Term or any Renewal Term by providing written notice of intent not to renew to Canmor at least thirty (30) days prior to the expiration of the then current term.
    - 2. The Agreement may not be terminated by Merchant prior to the date of expiration. The Agreement will be deemed terminated in the event that any of the following occur without Canmor having been notified and acceptance granted: (a) No purchase transactions affected on the equipment for thirty (30) consecutive days, (b) Primary communications is out of service. (c) Refusal of delivery and/or installation. In the event of early termination, Merchant hereby agrees to reimburse Canmor in full for unrecovered costs relating to setup, installation, de-installation, registration, licensing, commissions and other fees relating to Canmor's execution of this Agreement. In the event of early termination or cancellation by Merchant, Merchant agrees to pay to Canmor an early termination or cancellation fee of \$500.00 plus administration fee of \$75.00 plus an interest charge if fee is not paid within 30 days of termination or cancellation at an annual rate of 24%. Canmor will waive early termination fee, in the event the merchant has received a proposal from a competitor of Canmor claiming to offer a lower overall price, provided that Canmor receives the proposal and is offered the opportunity to evaluate the proposal and match or surpass the overall price.
  - ii. **Canmor or Member.**
    - 1. The Agreement may be terminated by Canmor or Member at any time with or without cause during the Initial Term or any Renewal Term.

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2. Canmor's and Member's rights of termination under the Agreement are cumulative. A specific right of termination in this Section shall not limit any other right of Canmor or Member to terminate the Agreement expressed elsewhere.
  - iii. **Notice of Termination.** Notice of termination by Merchant, Canmor, or Member must be given in writing. Merchant's termination request shall be completed on a form available from Canmor, but at a minimum, must include the name of the Merchant and Merchant Identification Number, and must be signed by the principal owner(s) of Merchant. Termination shall be effective on the date specified by the written notice; provided, however Merchant agrees that closing Merchant's account with Canmor may take up to thirty (30) days following Canmor's receipt of written notice of termination. In those limited instances where Merchant's account is reinstated by Canmor following termination by either Merchant or Canmor in the Initial or any Renewal Term, all of Merchant's obligations under the Agreement are likewise reinstated and will renew for successive one (1) year Renewal Terms effective on the date of reinstatement.
- c. Action Upon Termination.**
- i. **Accounts.** All Merchant's obligations regarding Transactions processed prior to termination will survive termination. Funds related to Transactions processed prior to termination may be held by Canmor until Merchant pays all amounts Merchant owes Canmor or Member or amounts for which Merchant is liable under the Agreement. Merchant must maintain enough funds in the DDA following termination to cover all Chargebacks, returns, adjustments, fees, fines, penalties, assessments from the Payment Networks and other amounts due under the Agreement for a reasonable time, but in any event, not less than one-hundred-eighty (180) days from termination.
  - ii. **Leased Equipment.** If Merchant's Leased Equipment is owned by Canmor, Merchant must return all equipment owned by Canmor within ten (10) business days and immediately pay Canmor any amounts Merchant owes for such Leased Equipment.
  - iii. **Return to Canmor.** All Confidential Information, promotional materials, advertising displays, emblems, Transaction Receipts, Credit Transaction Receipts, and other forms supplied to Merchant and not purchased by Merchant or consumed in use will remain the property of Canmor and must be returned to Canmor or destroyed within ten (10) business days after termination of the Agreement. Merchant will be fully liable for any and all loss, cost, and expense suffered or incurred by Canmor arising out of any failure to return or destroy such materials following termination.

### 16. COMPLIANCE WITH LAWS AND PAYMENT NETWORK REGULATIONS; MATCH™ AND CONSORTIUM MERCHANT NEGATIVE FILE.

- a. Canmor may from time to time provide the Merchant with instructions governing the provision of services under this agreement, or instructions and specifications necessary for compliance with Interac network rules and regulations; however, Canmor shall not be required to provide such instruction, and compliance with all relevant procedures, rules and regulations is the sole responsibility of the Merchant. The Merchant agrees to comply with all instructions, procedures, rules and regulations as may be in effect from time to time.
- b. Merchant agrees to the following Interac network regulations:
  - i. Provide adequate protection against disclosure of a Cardholder's personal identification number (PIN) during its entry;
  - ii. Locate PIN entry device(s) (PIN pad) so as to minimize the potentiality for disclosing the PIN of the Cardholder during the Cardholder's entry of his/her PIN and never ask the Cardholder his/her PIN;
  - iii. Retain the Merchant's copy of the transaction record issued for each transaction for at least one calendar year from the transaction date. If a Chargeback is initiated by a cardholder, failure to deliver a copy of the Merchant's copy will result in the value of the transaction charged to the merchant;
  - iv. Provide the Cardholder with a record of his/her financial transaction;
  - v. Should the Merchant's printer be out of service, the Cardholder will be given the option of either receiving an abbreviated transaction record, which may be as brief as a sales slip with notation by sales staff that the payment was made using an Interac card and showing the cardholder's primary account number.
- c. **Compliance with Laws and Payment Network Regulations.** Merchant agrees to comply with the Payment Network Regulations, including all requirements applicable to obtaining authorization for ACH debits from a consumer account, and with any policies and procedures provided by Member or Canmor. The Payment Network Regulations are incorporated into the Agreement by reference as if they were fully set forth in the Agreement. Merchant further agrees to comply with all Laws, including without limitation, Laws related to: (i) Payment

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Devices; (ii) electronic funds transfers; and (iii) confidential treatment of information, including its requirements relating to the content of Transaction Receipts provided to Customers. Merchant will assist Member and Canmor in complying in a complete and timely manner with all Laws and Payment Network Regulations now or hereafter applicable to any Transaction or the Agreement. Merchant will execute and deliver to Member and Canmor all documents they may from time to time reasonably deem necessary to verify Merchant's compliance with this provision.

- d. **Privacy Laws.** Merchant represents, covenants and agrees that it is in compliance with all applicable privacy laws, including without limitation the Personal Information Protection and Electronic Documents Act (Canada), and that any personal information of a Customer that may be communicated or disclosed to Canmor under or in connection with the Agreement or any services to be provided by Canmor to Merchant has been obtained in compliance with such laws and that Canmor will not be in breach of any such laws by receiving and using such information in connection with performing its obligations under or in connection with the Agreement or any services to be provided by Canmor to Merchant.
- e. **MATCHTM and Consortium Merchant Negative File.** Merchant acknowledges that Member and/or Canmor is required to report Merchant's business name and the name of Merchant's principals to the MATCHTM listing maintained by MasterCard and accessed and updated by Visa and American Express, to the Consortium Merchant Negative File maintained by Discover, if applicable, or to any other negative or terminated merchant file of any other Payment Network, if applicable, pursuant to the requirements of the Payment Network Regulations. Merchant specifically consents to the fulfillment of the obligations related to the listing by Canmor and Member, the listing itself and Merchant waives and holds harmless Canmor and Member from all claims and liabilities Merchant may have as a result of such reporting.
- f. **Security Program Compliance.** Merchant must comply with the requirements of the Payment Card Industry Data Security Standard (PCI DSS) including the Cardholder Information Security Program (CISP) of Visa, the Site Data Protection Program (SDP) of MasterCard, the Data Security DISC Program and the PCI DSS regulations of Discover Network, and the security programs of any other Payment Network regarding which Merchant accepts a Payment Device, as applicable, and any modifications to, or replacements of such programs that may occur from time to time. Merchant also shall ensure that all third parties from whom Merchant procures a Value Added Servicer or third party POS Devices comply with the requirements of those programs. Upon request, Canmor will provide Merchant with the respective website links to obtain the current requirements of the Visa, MasterCard, and Discover Network Security Programs. Merchant is responsible for Merchant's own actions or inactions, those of Merchant's officers, directors, shareholders, employees and agents, including any Value Added Servicer (collectively, "Merchant's Agents"). Merchant shall indemnify and hold Canmor and Member harmless from any liability, loss, cost, or expense resulting from the violation of any of the Security Program requirements by any of Merchant's Agents.
- g. **Data Compromise.**
  - i. **Notice and Investigation.** Merchant acknowledges and agrees that Cardholder Data and bank account information obtained by Merchant in connection with any Transaction is the property of the financial institution that issued the Payment Device or holds the Customer's account. Merchant must notify Canmor and Member within twenty-four (24) hours (and if notice is given orally, it must be confirmed in writing within the same twenty-four hour period), if Merchant knows or suspects that Cardholder Data, Customer information, or Transaction information has been accessed or used without authorization from Merchant, Merchant's Agents or systems within Merchant's or its agent's control (a "Data Incident"). The notice must include: (a) a detailed written statement about the Data Incident including the contributing circumstances; (b) the form, number and range of compromised account information; (c) specific account numbers compromised; and (d) details about the ensuing investigation and Merchant's security personnel who may be contacted in connection with the Data Incident. Merchant must fully cooperate with the Payment Networks, Canmor and Member in the forensic investigation of the Data Incident. Within seventy-two (72) hours of becoming aware of the Data Incident, Merchant must engage the services of a data security firm acceptable to the Payment Networks and/or to Canmor and Member to assess the vulnerability of the compromised data and related systems. Merchant must provide weekly written status reports to Canmor and Member until the forensic audit is complete. Merchant must promptly furnish updated lists of potential or known compromised account numbers and other documentation or information that the Payment Networks and/or Canmor and Member may request. In addition, Merchant must provide all audit reports to Canmor and Member, and such audits must be completed to the satisfaction of the Payment Networks and/or of Canmor and Member. If Merchant fails to supply the forensic audits or other

information required by the Payment Networks and/or by Canmor and Member, Merchant will allow Canmor or Member to perform or have performed such audits at Merchant's expense.

- ii. **Preservation of Records.** In the event of a Data Incident, Merchant must take immediate steps to preserve all business records, logs and electronic evidence relating to the Data Incident. Merchant shall cooperate with Canmor and Member to rectify, correct and resolve any issues that may result from the Data Incident, including providing Canmor and Member with (and obtaining any necessary waivers for) all relevant information to verify Merchant's ability to prevent future data incidents in a manner consistent with the Agreement.
- iii. **Liability for Data Incident.** Without waiving any of Canmor's and Member's rights and remedies, Merchant is liable for all fraudulent transactions related to any Data Incident and all costs Canmor or Member incur as a result of such Data Incident, including any fees, fines, penalties, or assessments by the Payment Networks, claims from third parties, all costs related to the notification of Cardholders or Customers and cancellation, re-issuance of Payment Devices (including underlying accounts), forensic investigation, and PCI DSS review for a report of compliance.

### 17. CONFIDENTIALITY; PASSWORDS.

#### a. Confidentiality.

- i. **Customer and Transaction Information.** Merchant shall, at all times protect the confidentiality of Customer and Transaction information in accordance with all applicable Laws and Payment Network Regulations. Merchant will not disclose Customer or Transaction information to any third party, except to an agent of Merchant approved by Canmor that is assisting in completing a Transaction, or as required by Laws or Payment Network Regulations. Merchant must maintain all systems and media containing Customer and Transaction information in a secure manner to prevent access by or disclosure to anyone other than Merchant's authorized personnel. Merchant must maintain Customer and Transaction information for such time periods as may be required by Laws and the Payment Network Regulations and thereafter destroy in a manner that will render the data unreadable all such media that Merchant no longer deems necessary or appropriate to maintain. Further, Merchant must take all steps reasonably necessary to ensure that Customer and Transaction information is not disclosed or otherwise misused. Merchant may not retain or store magnetic stripe or CVV2/CVC2/CID data after authorization for any purpose, including record keeping or additional authorization processing. After authorization, Merchant may only retain the Customer account number, name, and Card expiration date if Merchant has a reasonable business purpose to retain such information and is otherwise in compliance with the Agreement. Merchant may not print on any Transaction Receipt or other document that is given to the Customer, retained by the Merchant, or transferred to a third party, the entire contents of the magnetic stripe or the CVV2/CVC2/CID data elements. In accordance with Section 16. f. Merchant shall immediately notify Canmor if Merchant knows or suspects that any Customer or Transaction information has been accessed by unauthorized persons or has been used for any purpose not permitted herein whether such access or use occurred at: (i) the Merchant; (ii) a Value Added Servicer; (iii) Canmor or Member; or (iv) elsewhere.
- ii. **Bankruptcy.** In the event of failure or other suspension of Merchant's business operations, including bankruptcy or insolvency, Merchant must not sell, transfer, or disclose any materials that contain Customer or Transaction information to third parties. Merchant must:
  1. Return this information to Canmor; or
  2. Provide acceptable proof of destruction of this information to the Canmor.
- iii. **Canmor or Member Confidential Information.** Merchant agrees to protect Canmor's and Member's Confidential Information from unauthorized disclosure, publication, or dissemination with the same standard of care and discretion it employs with similar information of its own, but in no event less than reasonable care, and shall not use, reproduce, distribute, disclose, or otherwise disseminate Canmor's or Member's Confidential Information, except in connection with the performance of its obligations under this Agreement. The obligations of non-disclosure provided hereunder shall continue during the term of the Agreement and (i) with respect to Confidential Information that does not constitute a trade secret, for a period of three (3) years thereafter and (ii) with respect to Confidential Information that rises to the level of a trade secret under applicable law, for such period of time thereafter as the information shall retain its status as a trade secret under applicable law, and no less than three (3) years thereafter.

- b. **Passwords.** If Merchant receives a password from Canmor to access any of Canmor's databases or services Merchant will: (i) keep the password confidential; (ii) not allow any other entity or person to use the password or gain access to Canmor's databases or services; (iii) be liable for all action taken by any user of the password; and (iv) promptly notify Canmor if Merchant believes the Canmor's databases or services or Merchant's information has been compromised by use of the password. If Merchant receives passwords from a third party, Merchant must

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protect such passwords in the manner required by such third party and indemnify, defend, and hold Canmor and Member harmless from any losses, costs, or expenses that arise from Merchant's use or misuse of such third party passwords.

- c. **Proprietary Interest.** Merchant has no interest whatsoever, including, without limitation, copyright interests, franchise interests, license interests, patent rights, property rights, or other interest in any services, software, or hardware provided by Canmor. Nothing in the Agreement shall be construed as granting Merchant any patent rights or patent license in any patent which Canmor may obtain in respect to Canmor's services, software, or equipment. Merchant will make no attempt to duplicate or otherwise ascertain the components, circuit diagrams, logic diagrams, flow charts, source and object code, schematics or operation of, or otherwise attempt to reverse engineer any of Canmor's services, equipment, or software.

### 18. MISCELLANEOUS PROVISIONS.

- a. **Entire Agreement.** The Agreement (including all attachments, exhibits, addenda and other documents incorporated by reference into the Agreement, attachments, exhibits or addenda), Payment Network Regulations, and any amendment or supplement to either, constitutes the entire agreement between the parties, and all prior or other representations, written or oral, are merged in and superseded by the Agreement; provided, however the Agreement shall not supersede any Personal Guaranty signed by a Guarantor, which Personal Guaranty shall be deemed to remain an agreement separate and distinct from the Agreement. In the event of a conflict between the documents comprising the Agreement, excluding any Personal Guaranty, the following order of priority will apply: (i) any amendment to the Agreement; (ii) the TOS; (iii) the Payment Network Regulations; (iv) the Merchant Application; (v) any Merchant Agreement or Merchant Processing Agreement; (vi) the Merchant Operating Guide; and (vii) any other guides or manuals provided to Merchant from time to time.
- b. **Jurisdiction and Venue.** All matters arising out of or related to the Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in the Province of Ontario with respect to Transactions occurring in Canada, except for the hypothec created pursuant to Section 6. a.i. (the "Québec Hypothec") which will be governed by and construed in accordance with the laws of the Province of Québec and the federal laws of Canada applicable in the Province of Québec. The parties agree that all performances and Transactions under the Agreement will be deemed to have occurred in the Province of Ontario and that Merchant's entry into and performance of the Agreement will be deemed to be the transaction of business within the Province of Ontario. Any action or proceeding relating to or arising from the Agreement (other than collection actions by Canmor or Member relating to amounts owed by Merchant under the Agreement) must be brought, held, or otherwise occur exclusively in Toronto, Canada, and the parties hereby attorn to the exclusive jurisdiction of the courts of Ontario (or of the courts of Québec with respect to the Québec Hypothec). Merchant, Member and Canmor hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the Agreement. Merchant, Member and Canmor each represents to the other that this waiver is knowingly, willingly and voluntarily given.
- c. **Exclusivity.** During the Initial Term and any Renewal Term of the Agreement, Merchant will not enter into an agreement with any other entity that provides processing services similar to those provided by Canmor and Member as contemplated by the Agreement without Canmor's written consent.
- d. **Construction.** Any alteration or strikeover in the text of the Agreement will have no binding effect and will not be deemed to amend the Agreement. The headings used in the TOS are inserted for convenience only and will not affect the interpretation of any provision. The language used will be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction will be applied against any party.
- e. **Assignability.** The Agreement may be assigned by Member or Canmor, but may not be assigned by Merchant, directly or by operation of law, without the prior written consent of Canmor. If Merchant, nevertheless, assigns the Agreement without Canmor's consent, the Agreement will be binding on the assignee as well as Merchant. If Merchant sells its business and the new owners incur Chargebacks, the original owner(s) and all original Guarantors will be held personally liable for all Chargebacks and any other liabilities of the new owners.
- f. **Notices.** Any written notice to the Merchant under the Agreement will be deemed received upon the earlier of: (i) actual receipt; or (ii) five (5) business days after being deposited in Canada Post mail, or with a nationally recognized overnight carrier, and addressed to the last address shown on the records of Canmor. Any written notice

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to Canmor, shall be sent by mail or a nationally recognized overnight carrier to: 600 Euclid Street, Unit 1, Whitby, ON L1N 5C2, and shall be deemed received only upon actual receipt.

- g. Bankruptcy.** Merchant will immediately notify Canmor of any Bankruptcy Proceeding, receivership, insolvency, or similar action or proceeding initiated by or against Merchant or any of its principals. Merchant will include Canmor on the list and matrix of creditors as filed with any bankruptcy, commercial or civil court, whether or not a claim may exist at the time of filing. Failure to do so will be cause for immediate termination of the Agreement and shall allow the pursuit of any other action available to Canmor under applicable Payment Network Regulations or Laws. Merchant agrees that the Agreement is a contract for the advance of credit to Merchant within the meaning of Section 11.01(b) of the Companies' Creditors Arrangement Act (Canada) and within the meaning of Section 65.1(4)(b) of the Bankruptcy and Insolvency Act (Canada) and cannot be assigned by Merchant in the event of a Bankruptcy Proceeding relating to Merchant. Merchant hereby acknowledges but that for the agreement in the immediately preceding sentence, Member and Canmor would not have entered into the Agreement.
- h. Attorneys' Fees.** Merchant will be liable for and will indemnify and reimburse Member and Canmor for all reasonable attorneys' fees and other costs and expenses paid or incurred by Member or Canmor: (i) in the enforcement of the Agreement; (ii) in collecting any amounts due from Merchant to Member or Canmor; (iii) resulting from any breach by Merchant of the Agreement; or (iv) in defending against any claim or cause of action brought by Merchant against Canmor or Member arising out of the Agreement.
- i. Customer Contact.** Merchant authorizes Member and Canmor to contact its Customers or their Issuer if Member or Canmor determines that such contact is necessary to obtain information about any Transaction between Merchant and a Customer.
- j. Telephone Recording.** Merchant authorizes Canmor to monitor and record telephone conversations at any time without further notice to the parties to such conversations. The decision to record any conversation shall be solely in Canmor's discretion.
- k. Information Sharing.** Merchant understands and agrees that Canmor may disclose any information gathered by Canmor to (i) Canmor's "affiliates" (i.e., companies related to Canmor by common control or ownership) that offer financial products or services, including those identified in the Agreement and to Canmor's administrative or service units that perform such functions; (ii) to non-affiliated companies to assist Canmor in providing the products and services Merchant has requested; (iii) to credit rating agencies; and (iv) as required by the Payment Network Regulations or the Laws (e.g., for tax reporting purposes or in response to a subpoena).
- l. Communication with Merchant.** Merchant agrees that Canmor and Member may provide Merchant with information about their services including, without limitation, information about new products and/or services by telephone, electronic mail, and/or facsimile.
- m. Amendments.** Member and Canmor may propose amendments or additions to the Agreement. Member or Canmor will inform Merchant of a proposed change in a periodic statement or other notice. Merchant will be deemed to have agreed to the change if Merchant continues to present Transactions to Member and Canmor after thirty (30) days following the issuance of the notice. Notwithstanding the previous sentence, changes to fees authorized by the Agreement will be effective upon notice to Merchant, unless a later effective date is provided; provided, that, with respect to Credit Card and Debit Card Transactions, changes to fees or the introduction of new fees authorized by the Agreement will be effective upon ninety (90) days notice to Merchant, unless a later effective date is provided. Further, Canmor is entitled to pass through to Merchant any fee increases imposed upon Canmor by Visa, MasterCard, Discover Network, any other Payment Network, and any other third party including telecommunications vendors; provided, that, with respect to Credit Card and Debit Card Transactions, any such fee increases will be effective upon ninety (90) days notice to Merchant.
- n. Severability and Waiver.** If any provision of the Agreement is found to be invalid, illegal or otherwise unenforceable by a court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions of the Agreement shall not in any way be affected or impaired thereby if the essential terms and conditions of the Agreement for each party remain valid, legal and enforceable. Neither the failure, the delay by Canmor or Member to exercise, nor the partial exercise of any right under the Agreement will operate as a waiver or estoppel of such right, nor shall such amend the Agreement. All waivers requested by Merchant must be signed by Canmor.



- o. Independent Contractors.** Canmor, Member, and Merchant will be deemed independent contractors and no one will be considered an agent, joint venturer, or partner of the other, unless and to the extent otherwise specifically provided herein. The Agreement has been entered into solely for the benefit of the parties hereto and is not intended to create an interest in any third party.
  - p. Survival.** All of Merchant's obligations to Canmor and Member shall survive termination of the Agreement, including, without limitation, Sections (A)(4)(a)-(d), (A)(5)(a)-(e), (A)(6)(a)-(b), (A)(7)(a)-(c), (A)(8)(a)-(d), (A)(9)(g), (A)(13), (A)(14), (A)(15), (A)(17)(a)-(d), (A)(18)(b), and (A)(18)(h) of the TOS.
  - q. Counterparts; Facsimile Signatures; Signatures Electronically Scanned and Delivery by E-mail.** The Agreement may be signed in one or more counterparts, each of which shall constitute an original and all of which, taken together, shall constitute one and the same agreement. Delivery of the various documents and instruments comprising the Agreement may be accomplished by a facsimile transmission or electronically scanned and delivered by e-mail, and such a signed facsimile, scanned document or copy shall constitute a signed original.
  - r. Force Majeure.** None of the parties hereto shall be considered in default in performance of its obligations to the extent such performance is delayed by force majeure affecting the party's ability to so perform. Force majeure shall include, but not be limited to, hostilities, restraint of rulers or peoples, revolution, civil commotion or riots, strike, lockout, epidemic, accident, fire, flood, earthquake, windstorm, explosion, lack of or failure of telecommunication facilities, regulation or ordinance, demand or requirement of any government or governmental agency, or any court, tribunal or arbitrator(s), having or claiming to have jurisdiction over the subject matter of the Agreement or over the parties hereto, or any act of God or any act of government or any cause whether of the same or different nature existing now or in the future which is beyond the reasonable control of the parties hereto.
  - s. Expenses.** Except as otherwise specifically provided in the Agreement, each party shall pay its own costs and expenses in connection with the Agreement and the transactions contemplated hereby, including all attorneys' fees, accounting fees and other expenses.
  - t. No Third Party Beneficiaries.** No provisions of the Agreement shall be construed to confer any rights or benefits on any Person not a party to the Agreement or a permitted assignee or successor of a party to the Agreement, unless such rights or benefits are expressly extended to third parties.
- 19. LANGUAGE.** The parties hereby acknowledge that they have required the Agreement and all related documents to be drawn up in the English language. Les parties reconnaissent avoir demandé que le présent contrat ainsi que tous les documents qui s'y rattachent soient rédigés en langue anglaise.