



## MERCHANT SERVICES TERMS AND CONDITIONS

These terms and conditions ("**Terms**") together with the following documents form the merchant agreement (the "**Agreement**");

1. your application for merchant services submitted to Bambora Inc. (your "**Application**");
2. Information Summary Box (only for Agreements entered into on or after March 1, 2017);
3. Fee Disclosure Box (only for Agreements entered into on or after March 1, 2017);
4. Fee Schedule;
5. all other documents incorporated by reference into the Agreement; and
6. any other document or procedure we may provide or make available to you during the term of this Agreement that we indicate forms part of this Agreement,

between you, The Toronto-Dominion Bank ("**we**", "**us**" and "**our**") and Bambora Inc. ("**Bambora**") in connection with the provision of merchant products and services ("**Services**") to you, so that your customers may pay for your goods and services by means of credit cards and/or debit cards. You acknowledge and agree to us: (a) appointing Bambora as our agent under these Terms, and (b) that we have provided Bambora with the power and authority to act in the name of and on behalf of us (and accordingly, the words "we", "us" and "our" will also mean Bambora in this context, as applicable), for the sole purpose of administering the provision of merchant services and performing the duties to be provided and performed by us pursuant to these Terms. In addition, you agree that Bambora is a third party beneficiary of the rights and remedies contained in the Agreement and that Bambora will have the benefit of such rights and remedies and will be entitled to rely on and enforce, in proceedings brought in its own name, such rights and remedies against you. References in these Terms to the "**merchant**", "**you**" and "**your**" refer to the merchant who completed and submitted an Application to Bambora, or on whose behalf an Application was completed and submitted to Bambora. Your use of any product or service covered by the Agreement means that you have received the Agreement (including these Terms, the Application and the fees), that you have read and accept the Agreement, and you agree to be bound by the Agreement and to pay all fees and charges provided for under the Agreement. The Agreement replaces any previous agreement between you and us relating to the provision of Services.

**Future Products and Services:** If you obtain additional products or services from Bambora in the future which require that we provide you with such additional products or services, your use of that product or service will be subject to the Agreement, except to the extent that you and we agree otherwise, and such use will act as your acceptance of and agreement to be bound by the Agreement in respect of that product or service.

### 1.0 DEFINITIONS

- 1.1 Capitalized and other terms used in these Terms have the meanings set out in Articles 4.0 and 18.0.

### 2.0 ACCEPTING CARDS

- 2.1 You will:
  - (a) accept Cards which we have offered to Acquire for you ;

- (b) process all Transactions exclusively with us during the term of the Agreement unless we have agreed otherwise in writing; and
  - (c) indicate your consent to accept any type of Card in writing, or by any other method, including fax, email or telephone.
- 2.2 You will not:
  - (a) charge Cardholders prices for goods or services that exceed your ticketed or posted price for such goods or services;
  - (b) impose any fees, other charges or other conditions for the use of a Card as a means of payment, generally known as surcharging, without our prior written approval;
  - (c) require a minimum amount of goods be purchased or services be performed before accepting a Credit Card; or
  - (d) accept a Card to collect or refinance an existing debt with respect to Credit Cards only.
- 2.3 You will submit all Credit Card Transactions to us within 2 Business Days of the date of the Transaction. If you fail to do so, we may adjust the fees and charges applicable to such Transactions. If you fail to close a Batch (if applicable) within such period, we have the right to close such Batch at any subsequent time.
- 2.4 You will not make any cash advance to a Credit Cardholder or any other person as a part of a Credit Card Transaction, or include the amount of any cash advance in the sum being invoiced to a Credit Cardholder in a Remote Transaction.
- 2.5 You will not attempt to obtain multiple Authorizations for a single Transaction on a single Credit Card or to reduce or disguise the amount of any Transaction by the use of multiple Remote Transactions (known as "split ticketing").
- 2.6 You will not deposit a Remote Transaction with any other financial institution, deposit more than one copy of a Remote Transaction with us, or receive credit or payment more than once, from any source, for any Remote Transaction.
- 2.7 You will not deliver Remote Transactions to us in respect of fictitious or fraudulent Transactions or with respect to any Transaction that is illegal or may, in the sole discretion of a Payment Card Network, damage the goodwill of such Payment Card Network.
- 2.8 You will not factor (process a Remote Transaction of or for another person), sell or otherwise transmit Remote Transactions (except as permitted in the Agreement).
- 2.9 You will not submit Remote Transactions to us that do not relate to your Transactions.
- 2.10 You will not deposit or complete a Remote Transaction for payment using a Card that we have notified you not to honour, that has been declined or in respect of which you have been unable to obtain an Authorization.
- 2.11 You acknowledge and agree that an Authorization indicates available credit on the Credit Card or funds in the Cardholder's bank account only, and does not mean that a Transaction has been authorized by the Cardholder or that it is authentic or valid. An Authorization does not limit our rights under Article 5.0 or this Article 2.0.

- 2.12 If you are in the restaurant business, you must ensure that the final sale price of any pre-authorized Credit Card Transaction that you process does not exceed the pre-authorized amount by more than 20%.
- 2.13 You will ensure that you and your employees only submit Transactions for valid and legitimate purchases from you of goods or services.
- 2.14 You will not engage in any acceptance practice that discriminates against or discourages use of a Credit Card in favour of another Credit Card, except that you may offer discounts pursuant to Section 17.3.

### **3.0 REMOTE TRANSACTIONS**

- 3.1 You will not accept Remote Transactions without our prior written approval. If we approve the acceptance of Internet Transactions, the approval will only apply to a specific website and Internet service provider. Accepting Internet Transactions through any new website or new Internet service provider requires our prior written approval. You hereby authorize us and will obtain the authorization of your Internet service provider for us to conduct security assessment scans of the website(s) and server(s) over the Internet. If you would like to be provided with some information regarding fraud related tools that may help to minimize the risks of Remote Transactions, Bambora can provide you with such information.
- 3.2 You acknowledge and agree that Remote Transactions carry a greater risk of repudiation by Cardholders, and refusals and Chargebacks by us, because the Transaction is not conducted in an environment where you and a Cardholder are both present in person. In particular, Remote Transactions do not allow for the following:
  - (a) inspection of goods or services by Cardholders;
  - (b) inspection by you of Cards including account numbers, names, expiry dates and signatures;
  - (c) signing of transaction records or imprinted sales drafts by Cardholders; and
  - (d) comparison of signatures on transaction records or sales drafts with signatures on Cards.
- 3.3 For each Remote Transaction, you will obtain the expiry date of the Card, if applicable, and provide the expiry date to us when you request Authorization of the Transaction from us.
- 3.4 We may refuse to credit, or may Chargeback, Remote Transactions that the Cardholder has disputed with respect to authorization, authenticity or validity.
- 3.5 You will not accept Cards for the provision of, and you will not display on or be hyperlinked to a website that sells or displays, any of the following goods or services or any other type of business that we deem unacceptable: escort and dating services, adult telephone call services, collection agency services, cheque cashing services, adult entertainment including pornography, massage parlour services, time share sales, gambling, extended car warranties except major car dealerships, weight loss vitamins and pills, cult material, pre-paid telephone cards, bail, credit reporting, resume preparing services, pyramid sales, and satellite television sales except for satellite television sales that are legal in Canada. You will not accept Cards for the provision of website hosting services.

- 3.6 We will not be liable for any claims, losses, costs, damages and expenses resulting from the operation of or the security of the Electronic Commerce Facilities.
- 3.7 You will be responsible to ensure that the Electronic Commerce Facilities operate securely in accordance with a Payment Card Network-approved method so as to protect Cardholders from the unauthorized disclosure of information with respect to Cards. You will ensure that the Electronic Commerce Facilities comply with the operating and security standards as set by us and Payment Card Networks from time to time. We may require from time to time that the Electronic Commerce Facilities be assessed, at your expense, by us, by a Payment Card Network and/or by another third party chosen by us in order to verify compliance with the operating and security standards. You will fully co-operate with any such assessment and be responsible for all costs associated with implementing or maintaining compliance of the Electronic Commerce Facilities with the operating and security standards.
- 3.8 If at any time the operating or security standards of the Electronic Commerce Facilities do not comply with our standards, you will, at our direction, immediately suspend offering payment by Card for the sale of goods and services over the Internet until such time as we permit re-activation.
- 3.9 Any website(s) from which you accept Internet Transactions will contain at a minimum the following:
- (a) your legal name and the name under which you are carrying on business, displayed as prominently as any other information depicted on the website, other than images of the products or services being offered for sale;
  - (b) customer service contact information including business address, mailing address, telephone number, fax number and electronic mail address;
  - (c) the jurisdiction in which you are officially registered and located;
  - (d) a complete, fair and accurate description of goods and services being offered, including any relevant technical or system specifications;
  - (e) delivery policy, including method of delivery;
  - (f) any geographic limitations for the sale of goods and services and any export restrictions if applicable;
  - (g) return, exchange and refund policies;
  - (h) country and transaction currency, for example, by indicating that prices are payable in Canadian dollars;
  - (i) consumer data privacy policies;
  - (j) security capabilities and policy for transmission of Credit Card details;
  - (k) the Card Brand Mark, in full colour, to indicate Card acceptance in accordance with the Brand Mark standards established by the relevant Payment Card Network available on the website of such association;
  - (l) complaint handling procedures;

- (m) details of any applicable warranties or guarantees;
- (n) the total consideration payable for the goods and services;
- (o) an updated and accurate itemized list of the price of goods and services to be sold to the Cardholder as well as any shipping, delivery or handling charges, taxes, custom duties, broker fees or insurance costs;
- (p) the terms, conditions and method of payment;
- (q) the date when the goods will be delivered or the services are to be commenced;
- (r) for Recurring Transactions, a simple and easily accessible online cancellation procedure; and
- (s) any other information or disclosure that we require or that is required by law from time to time in any jurisdiction in which you offer goods or services.

3.10 For Internet Transactions, you will provide the Cardholder with a Transaction receipt, which will contain at a minimum the following:

- (a) your legal name and the name under which you are carrying on business;
- (b) your website address;
- (c) the amount of the Transaction;
- (d) the currency of the Transaction;
- (e) the date of the Transaction;
- (f) a unique Transaction identification number;
- (g) the name of the Cardholder;
- (h) the Authorization Number;
- (i) Transaction type (purchase or credit);
- (j) a description of the goods or services;
- (k) return and refund policies if there is any restriction on returns or refunds;
- (l) customer service contact information including telephone number and telephone country code and area code accessible from all local and international locations where you deliver goods or services;
- (m) terms and conditions of sale if there are any restrictions on terms and conditions of sale;
- (n) if there is a free trial period, the exact date the free trial period ends;
- (o) cancellation policies;

- (p) for a Recurring Transaction, the frequency and duration of the Recurring Transaction; and
  - (q) any other information or disclosure that we require or that is required by law from time to time in any jurisdiction in which you offer goods or services.
- 3.11 It is your sole responsibility to ensure that your website and Transaction receipts comply with the laws applicable to your jurisdiction.
- 3.12 You will not return the number of the Card to the Cardholder either online or on the Transaction receipt.

#### 4.0 VERIFIED BY VISA AND MASTERCARD SECURECODE TRANSACTIONS

- 4.1 The provisions of this Section apply to our provision of merchant services to you with respect to Verified by *Visa*\* Transactions, also referred to as VbV Transactions (as defined below) and to *MasterCard* SecureCode Transactions, also referred to as SC Transactions (as defined below). Except as provided for in this Section, the provisions of the Agreement between you and us will also apply to and govern each VbV and SC Transaction as applicable.
- 4.2 Additional Definitions
- (a) **“Cardholder Authentication Verification Value”** or **“CAVV”** means an authorization code for a VbV Transaction provided to you electronically through the VbV Facilities from the issuer of a *Visa* Card as part of a VbV Transaction;
  - (b) **“Commercial Card”** means a *Visa* Card which is a *Business Visa* Card, a *Corporate Visa* Card or a *Purchasing Visa* Card or a *MasterCard* Card which is a *MasterCard* Business Card, a *MasterCard* Corporate Card, a *MasterCard* Corporate Purchasing Card or a *MasterCard* Corporate FleetCard;
  - (c) **“MasterCard SecureCode Transaction”** or **“SC Transaction”** means an Internet Transaction conducted using SC Facilities and that has been authenticated using an authentication method and system that we have approved;
  - (d) **“New Channel”** means an environment in which payment is initiated through a device that does not use a standard *Hypertext Markup Language (HTML)* browser to process authentication of VbV or SC Transactions or an environment or device which is otherwise not approved by us for VbV or SC Transactions and includes but is not limited to Transactions initiated through a mobile telephone;
  - (e) **“Non-Authentication Message”** means a message provided to you electronically through the VbV or SC Facilities for an attempted VbV or SC Transaction indicating that the VbV or SC Transaction has not been authenticated;
  - (f) **“Non-Participation Message”** means a message provided to you electronically through the VbV or SC Facilities for an attempted VbV or SC Transaction indicating that the *Visa* Card does not participate in the VbV Transaction program or the *MasterCard* Card does not participate in the SC Transaction program;
  - (g) **“Prepaid Card”** means a *Visa* Card or a *MasterCard* Card established with previously deposited, authorized or transferred funds and which funds are subsequently decreased when the Transactions are conducted;

- (h) **"SC Facilities"** means the computer software and hardware that enables the processing of *MasterCard* SecureCode Transactions over the Internet;
  - (i) **"Universal Cardholder Authentication Field" or "UCAF"** means an authorization code for an SC Transaction provided to you through the SC Facilities from the issuer of a *MasterCard* Card as part of an SC Transaction;
  - (j) **"Verified by Visa Transaction" or "VbV Transaction"** means an Internet Transaction conducted using VbV Facilities and that has been authenticated using an authentication method and system that we have approved; and
  - (k) **"Verified by Visa Facilities" or "VbV Facilities"** means the computer software and hardware that enables the processing of Verified by *Visa* Transactions over the Internet;
- 4.3 You agree not to accept VbV or SC Transactions without our prior written approval. If we approve you to accept VbV or SC Transactions, the approval will only apply to a specific website, service provider and VbV or SC Facilities. Accepting VbV or SC Transactions through any new website, service provider or VbV or SC Facilities requires our prior written approval. You hereby authorize us and will obtain the authorization of your Internet service provider for us to conduct security assessment scans of the website(s) and server(s) over the Internet.
- 4.4 Subject to the exceptions set out in Section 4.5, a VbV Transaction will be considered equivalent to a *Visa* Card Transaction, and an SC Transaction will be considered equivalent to a *MasterCard* Card Transaction, in which a transaction record was signed by the Cardholder in person and at your premises in accordance with the terms of the Agreement if you provide us with the correct CAVV in respect of the VbV Transaction or the correct UCAF in respect of the SC Transaction or if you provide us with the record of a Non-Participation Message in respect of the VbV or the SC Transaction.
- 4.5 A VbV Transaction will not be considered equivalent to a *Visa* Card Transaction, or an SC Transaction will not be considered equivalent to a *MasterCard* Card Transaction, in which a transaction record was signed by the Cardholder in person and at your premises in accordance with the terms of the Agreement if:
- (a) you received a Non-Authentication Message;
  - (b) the Transaction was conducted by way of a New Channel and you received a Non-Authentication Message;
  - (c) the Transaction was conducted with a Prepaid *Visa* Card or *MasterCard* Card and you received a Non-Authentication Message or a Non-Participation Message;
  - (d) the Transaction was conducted with a Commercial Card and you received a Non-Authentication Message or a Non-Participation Message;
  - (e) the VbV or the SC Facilities failed to operate; or
  - (f) if we notified you that a Payment Card Network considers the number or amount of Chargebacks of your Transactions to be excessive in which case we may Chargeback any VbV or SC Transaction, as the case may be, in which you do not receive a CAVV or UCAF, as the case may be, and we may terminate your VbV or SC Facilities and the Agreement.
- 4.6 We may Chargeback a VbV or SC Transaction for any reason set out in the Agreement.

- 4.7 You agree to follow all procedures as set out in the Agreement in respect of Internet Transactions and confidentiality of Cardholders' information and you agree to comply for VbV Transactions, with the *VbV Merchant Best Practices*, as amended from time to time available on [visa.ca](http://visa.ca) and, for SC Transactions, with the MasterCard SecureCode Best Practices, as amended from time to time, available on [mastercard.com](http://mastercard.com).
- 4.8 You acknowledge and agree that we are not the service provider in respect of the VbV or the SC Facilities and that we will not be liable for any claims, losses, costs, damages, and expenses resulting from the operation of or the security of the VbV or the SC Facilities. You acknowledge and agree that your relationship with the service provider in respect of the VbV or the SC Facilities is governed by the terms and conditions of your arrangement with the service provider and that we are not responsible for any failure by you or the service provider to deal with each other in accordance with the terms and conditions of your arrangement. You agree to indemnify and save us harmless from and against any and all claims, suits, damages, losses, costs and expenses (including legal fees) of whatsoever nature arising between you and the service provider.
- 4.9 You agree to be responsible to ensure that the VbV and the SC Facilities operate securely so as to protect Cardholders from the unauthorized disclosure of information with respect to Credit Cards. You agree to ensure that the VbV and the SC Facilities comply with the operating and security standards as set by us and Payment Card Networks from time to time. You further agree that we may require that the VbV and the SC Facilities be assessed, at your expense, by us, by a Payment Card Network and/or by another third party chosen by us in order to verify compliance with the operating and security standards. You also agree to fully co-operate with and be responsible for all costs associated with implementing or maintaining compliance of the VbV and the SC Facilities with the operating and security standards.
- 4.10 If at any time the operating or security standards of the VbV or the SC Facilities do not comply with our standards, we may require you, and you agree to immediately suspend offering payment by Credit Card for the sale of goods and services over the Internet until such time as we permit re-activation.
- 4.11 You agree to display the VbV and/or the SC logo(s) on your website and agree to the terms of the Visa and/or the MasterCard trademark licence agreement, as applicable. The logo(s) and trademark licence agreements are available at [www.visa.ca/en\\_CA/run-your-business/accept-visa-payments/let-customers-know.html](http://www.visa.ca/en_CA/run-your-business/accept-visa-payments/let-customers-know.html) and [www.mastercard.com](http://www.mastercard.com).

## 5.0 REFUSALS AND CHARGEBACKS FOR TRANSACTIONS

- 5.1 Notwithstanding any Authorization or approval of a Transaction that may be given by or on behalf of the issuer of a Card (other than a Debit Card for *Interac* Direct Payment Transactions or a Gift Card), we may refuse to credit to the Account, may Chargeback to the Account, in whole or in part, or may deduct from any payment due to you the total amount of any Remote Transaction in any of the following circumstances:
- (a) the goods or services referred to in the Remote Transaction:
    - (i) have been returned to you or have not been received by the Cardholder; or
    - (ii) have been claimed by the Cardholder to have been returned to you, or not to have been received;



- (b) the Cardholder claims that the goods or services referred to in the Remote Transaction have not been received, are not as described, are defective, are unsatisfactory or were returned and that you failed to provide a refund to the Cardholder's Card;
  - (c) the Transaction is or is alleged by the Cardholder to be illegal, null or invalid;
  - (d) the Cardholder has disputed the authorization, authenticity or validity of any Transaction or part of a Transaction (including a Remote Transaction);
  - (e) we have credited the Account more than once for the same Remote Transaction;
  - (f) you have done anything prohibited by Articles 2.0 or 3.0 of these Terms or have failed to do anything required by Articles 2.0 or 3.0 of these Terms;
  - (g) you or your employees or agents have defrauded or attempted to defraud us;
  - (h) a copy of the Remote Transaction was requested for submission to the issuer of the Card but was not provided by you within the time required by the Agreement;
  - (i) a Remote Transaction is altered by you without the Cardholder's permission;
  - (j) you have failed to comply with the Agreement; or
  - (k) any other circumstance in which we in good faith deem it appropriate to refuse such Transaction or make such Chargeback.
- 5.2 The amount of any Chargeback and the costs we incur in collecting and processing any Chargeback constitute a debt that you must pay to us on demand and that is subject to Article 10.0 of the Agreement.
- 5.3 We will advise you of any Transaction that we have refused to pay or have charged back to you. At our option, we may do so after we have already refused to pay or charged back the Transaction.
- 5.4 In the event of a Chargeback, you may pursue your remedies against the Cardholder and we are not obligated to resolve any disputes arising between you and the Cardholder.
- 5.5 Except for the Remote Transactions that we have refused to credit to you or have charged back to you, you must not receive payment in respect of a Transaction from any party except from us.
- 5.6 If a Payment Card Network proposes additional circumstances, in addition to those referred to in this Article, that will result in a Chargeback, you agree to be responsible for such Chargebacks.

## **6.0 DISPUTES AND REFUNDS**

- 6.1 Any claims or disputes as to availability, quality, receipt, price or satisfaction of goods or services or the amount of a Transaction must be settled directly between you and the Cardholder.
- 6.2 If any refund or other money adjustment is payable by you to the Cardholder in respect of a Credit Card Transaction, such refund or adjustment must be made (unless the amount of such Transaction has not been credited to the Account by us or has been charged back to you) by means of you issuing a credit voucher or refund which must be delivered to us within two (2) Business Days of being issued.

- 6.3 You will not refund any Debit Card Transactions that are the subject of a dispute as to whether funds were or were not debited correctly to the account of a Cardholder. You will instruct the Cardholder to contact his or her own financial institution with respect to such disputes. You will not comment on or offer help to any Cardholder on matters that are within the responsibility of the Cardholder's financial institution, particularly concerning account relationships. You are liable for any attempts by you or your employees or agents to correct disputes in the event of any incorrect debit, including without limitation a double debit of the Cardholder's account or a cash refund.

## **7.0 GIFT AND LOYALTY CARDS**

- 7.1 Subject to our prior approval, you may use the Electronic Commerce Facility for the purpose of a Gift Card Program, a Loyalty Card Program or both which you or your service provider offers to your customers. With respect to any such program, our responsibilities are limited to switching or routing transactions under the program from you to your program service provider through our communications network.
- 7.2 As a condition of the approval referred to in Section 7.1 above, we may require testing of the Electronic Commerce Facility and, in such event, you shall be responsible for all costs incurred by us with respect to such testing. In addition, you may not make any changes to the Electronic Commerce Facility relating to any Gift Card Program or Loyalty Card Program without our prior written consent. You acknowledge and agree that we may require testing as a result of any change and that you will be responsible for all costs incurred by us with respect to such testing.
- 7.3 You agree to use the Gift and Loyalty Card Services at each of your participating locations in connection with your policies and procedures for stored value limits, usage fees, card expiration, card inventory, and management of Gift Card funds or Loyalty Card rewards and such other policies and procedures as may apply (the "**Gift Card Program**" or "**Loyalty Card Program**").
- 7.4 All costs incurred by us in switching and routing transactions in accordance with this Article 7.0 shall be charges payable by you to us under Article 10.0 of the Agreement.
- 7.5 We shall not be liable for any costs or any loss incurred by you or by any of your service providers with respect to any Gift Card Program or Loyalty Card Program. You shall indemnify and hold us harmless from any loss, damage or expense incurred by us in relation to any such program.
- 7.6 Any claim or dispute involving your customer or involving any of your service providers as to any transaction under the program or as to the program must be settled directly among such customer, you and any of your service providers.

## **8.0 DYNAMIC CURRENCY CONVERSION**

- 8.1 If you offer and provide dynamic currency conversion or any other currency conversion services to your customers who use Cards, you must:
- (a) obtain our approval prior to offering dynamic currency conversion to your customers who use Cards;
  - (b) inform your customers who use Cards that dynamic currency conversion is optional;
  - (c) not impose any additional requirements on a customer who uses a Card to have the Transaction processed in the local currency;

- (d) not use any language or procedures that cause a customer who uses a Card to choose dynamic currency conversion by default;
- (e) not misrepresent, either explicitly or implicitly, that its dynamic currency conversion service is a service of a Payment Card Network;
- and
- (f) comply with any other requirements regarding dynamic currency conversion that we may notify you of from time to time.

## **9.0 BANKING, SETTLEMENT AND SECURITY**

- 9.1 You will maintain the Account for the Agreement, subject to an operation of account agreement. The Account may be changed only with our prior approval.
- 9.2 Unless otherwise advised to you, we will generally provide settlement of:
  - (a) Credit Card Transactions within 3 Business Days. The net amount of such Credit Card Transactions will be credited to the Account, subject to reductions for refunds, refusals, Chargebacks, fees, penalties or other deductions: and
  - (b) *Interac* Debit Card Transactions on the same Business Day, provided that such *Interac* Debit Card Transactions are authorized prior to the recommended latest time by which Bambora must receive them, as advised to you by Bambora from time to time. The net amount of such *Interac* Debit Transactions will be credited to the Account, subject to reductions for refunds, adjustments, fees, penalties or other deductions.
- 9.3 You will ensure that Transactions submitted to us electronically conform to the standards and procedures that we require from time to time. If any Transaction submitted electronically to us is not readable or capable of being processed by our processing equipment as it does not comply with our standards, such Transaction will not be processed by us or credited to your Account.
- 9.4 Online reporting is available by logging into your account at [www.bambora.com/en/ca](http://www.bambora.com/en/ca) and via a monthly statement sent by e-mail to the address you provided to Bambora. The statement of account sets out total dollar amounts settled by Bambora and payments made or due to Bambora. You will review your statement no less frequently than every 30 days. You will notify Bambora in writing (i) within 30 days of the statement date if you receive a written statement or (ii) within 30 days of the date of the statement item if you use our online reporting service, of any errors or omissions in the statement. Bambora will investigate reported errors or omissions if Bambora receives written notice from you within 30 days of the statement date. If Bambora does not receive written notice from you within the 30 day time periods referred to above, the statement date, the statement and every item on the statement and Bambora's records respecting your account will be considered to be correct (subject to our rights under Section 9.5) and you may not afterwards make any claim against us respecting any item or omission in your statement.
- 9.5 All deposit figures are subject to final audit by us, and in the case of any inaccuracies, we have the right to debit or credit the Account.
- 9.6 We have the right to:

- (a) require that you provide a security deposit in an amount that is acceptable to us which will act as security for any outstanding Chargeback liability or potential, contingent or pending Chargeback liability or fees which may be incurred by you in respect of Transactions, or for any potential, pending or actual fine, fee or penalty which may be imposed on us by a Payment Card Network with respect to your acts or omissions in connection with the processing of your Transactions. We also have the right from time to time to require that you increase the amount of the security deposit in an amount that is acceptable to us. If you do not provide such security deposit or increased security deposit within 5 days of our request to you, or immediately in the event of an allegation of fraud or termination pursuant to Article 12.0 of the Agreement, we reserve the right to withhold or suspend providing services under the Agreement until such time as you provide the security deposit or increased security deposit. You hereby grant to us a security interest in such security deposit and you agree to sign any documents as may be required by us to perfect and otherwise confirm our security interest;
  - (b) retain funds on deposit in the Account or otherwise retain funds for such period as is consistent with any related Chargeback obligation or liability we have under Payment Card Network rules, in respect of outstanding Chargeback liability, or potential, contingent or pending Chargeback liability or fees which may be incurred after the termination of the Agreement; and
  - (c) without notice to you, freeze funds in the Account, or any other account you have with us or otherwise retain funds during the term of the Agreement and for such longer period as is consistent with any related Chargeback obligation or liability we have under Payment Card Network rules.
- 9.7 At any time, we may, at our option, require a separate or comingled reserve account to secure the performance of your obligations under the Agreement. You hereby grant to us a security interest in such reserve account and you agree to sign any documents as may be required by us to perfect and otherwise confirm our security interest. The reserve account may be funded through any or all of the following methods:
- (a) direct payment by you (if you are requested to do so by us); or
  - (b) transfer by us into the reserve account of funds withdrawn from (i) the Account, or (ii) other accounts maintained by you with us, or (iii) other accounts maintained by you with another financial institution.
- 9.8 In any of the circumstances set out in Section 12.1(c), we may, with or without notice to you, change processing or payment terms and/or suspend payments to you under the Agreement during our investigation of such circumstances.

## 10.0 FEES AND OTHER CHARGES

- 10.1 You agree to pay us fees for the services as set out in the Agreement. We may change the fees from time to time by providing 90 days' notice to you. The fees do not include any additional taxes or other government levies that may apply and may change from time to time. We will provide you prior notice of any change to such taxes or levies.
- 10.2 If in any month during the term of the Agreement, the total fees payable by you for both the Merchant Discount Rate fee and the *Interac* Direct Payment Transaction Fee in respect of a merchant outlet are less than the Minimum Monthly Discount Fee, you agree to pay to us the difference. Therefore, you may be charged up to the full amount of the Minimum Monthly

Discount Fee for each of your merchant outlets. If the Minimum Monthly Discount Fee is payable, it will be noted on your monthly statement as a *Minimum Discount Adjustment*. Other fees that may be paid to us are not considered in determining whether the Minimum Monthly Discount Fee is payable.

- 10.3 All fees, charges, adjustments, applicable taxes, and the amount of any Chargeback or any credit voucher issued by you and any other amount that you owe to us under the Agreement, constitute a debt payable on demand to us. We may, without notice to you, deduct from the amounts that we owe to you under the Agreement, debit the Account or deduct from any other account that you have with us or any of our affiliated companies (which include any member of the Toronto-Dominion Bank Group), and pay any amount that you owe us. You will pay all our legal expenses on a solicitor and own client basis (including legal fees charged by our own internal legal counsel) that we incur to collect or attempt to collect what you owe to us.
- 10.4 The rates and fees are based upon assumptions associated with the anticipated annual volume of Transactions, average Transaction amount and number and amount of Chargebacks. If the actual annual volume of Transactions, average Transaction amount or number or amount of Chargebacks are not as anticipated, we may, at any time and at our discretion, change the rates and fees payable by you without prior notice.
- 10.5 You agree to pay any fine, fee or penalty imposed on us by any Payment Card Network with respect to your acts or omissions in connection with the processing of your Transactions. Any such fine, fee or penalty will be a charge payable by you under this Article.
- 10.6 If we experience any increase in any cost or costs of telecommunications related to the provision by us to you of services under the Agreement, we will provide notice thereof to you and such increase will be a charge payable by you to us under this Article.

#### **11.0 PROCEDURES AND RECORDS**

- 11.1 We may from time to time provide you with procedures, forms, rules, instructions, manuals and Payment Card Network-mandated systems or operational changes. You will comply with and implement, and take all necessary and advisable measures to ensure that your personnel comply with and implement, all such procedures, forms, rules, instructions, manuals and changes. You agree to comply with all Payment Card Network rules and operating regulations as may be applicable to you and in effect from time to time as published (on a website or otherwise) by any Payment Card Network or of which you may have been otherwise informed.
- 11.2 You will keep all Remote Transactions and other records for a minimum of 18 months. We have the right to have access to and examine and copy such records at any reasonable time and you agree to provide us with access to such records when requested within 5 Business Days even after termination of the Agreement.
- 11.3 When we request that you provide a copy of a Remote Transaction, you will deliver it to us in the manner that we specify within 8 days of the date of our request. Failure to provide the copy within such time may result in a Chargeback.

#### **12.0 TERM, TERMINATION AND AMENDMENT**

- 12.1 Unless terminated earlier in accordance with its terms, the Agreement shall remain in full force and effect commencing on the date you first used any product or service covered by the Agreement. Notwithstanding the foregoing, the Agreement may be terminated:

- (a) by you at any time upon 60 days' prior written notice to Bambora;
- (b) by us at any time upon providing 10 days' notice to you. In any such case, upon such notice, all amounts payable by you hereunder shall be due and payable on demand;
- (c) by us without notice to you in the following circumstances, in which case all amounts payable by you hereunder shall be immediately due and payable in full without demand or another notice of any kind, all of which are waived by you:
  - (i) you fail to comply with the Agreement;
  - (ii) you fail to maintain the minimum credit standard established by us for your account from time to time, or we believe that there has occurred a material adverse change in your creditworthiness, assets, business or financial condition;
  - (iii) you become insolvent or the subject of bankruptcy or insolvency proceedings, commit an act of bankruptcy, make any assignment for the benefit of your creditors or a receiver is appointed for your business or any part of your property;
  - (iv) any statement made by you to induce us to enter into the Agreement was false in any respect when made, or becomes false;
  - (v) you are in default of paying any amount that you owe to us under the Agreement or under any loan, debt or obligation to us or anyone else;
  - (vi) you cease to carry on business;
  - (vii) we consider the number or amount of Chargebacks, potential Chargebacks, contingent Chargebacks or pending Chargebacks under the Agreement to be excessive or your Transactions to be irregular or any other circumstances which we consider, in our sole discretion, may increase our exposure to Chargebacks or otherwise present a financial or security risk to us;
  - (viii) any Credit Card or Debit Card Transactions are irregular;
  - (ix) you make a change described in Section 7.3 of the Agreement;
  - (x) a Payment Card Network requires that we terminate the Agreement;
  - (xi) you or any guarantor of your obligations under the Agreement ("**Guarantor**") default in paying any creditor, including us, or
  - (xii) you or a Guarantor fail to comply with any other agreement (including a security agreement) to which you or a Guarantor are a party.

12.2 Our right to terminate does not limit any of our other legal or equitable rights.

12.3 Upon termination, all imprints, forms and other material bearing the name or trade-mark of The Toronto-Dominion Bank or any Payment Card Network or any representation of them will be returned to The Toronto-Dominion Bank forthwith at your expense and risk and you will immediately discontinue all references to, uses of, or displays of such marks or names, unless you are permitted to do so under another agreement.

- 12.4 If the Agreement is terminated, your right to accept Cards in accordance with the Agreement and to use any advertising materials or other display materials provided by us will immediately cease.
- 12.5 The provisions of Sections 9.8, 10.3, 11.2, 11.3, 12.2, 12.4, 12.5 and 17.7 and Articles 13.0, 14.0 and 15.0 of these Terms will survive termination of the Agreement. All obligations of the parties in respect of any event which occurred prior to the date of termination of the Agreement will survive such termination. After termination you will continue to be responsible for payment of all Chargebacks, fees and other amounts that you owe to us under the Agreement.
- 12.6 We may amend the Agreement from time to time by providing 30 days' notice to you by sending you such amendment or by directing you to download such amendment from Bambora's website.

### **13.0 LIMITATION OF LIABILITY AND INDEMNITIES**

- 13.1 Any and all disputes between you and a Cardholder or another person relating to the receipt, quality, price or satisfaction of goods or services furnished by you or any act or omission of you arising out of a Transaction (unless the amount of such Transaction has not been credited to your Account by us or has been charged back to you), must be handled directly by you without any liability to us.
- 13.2 We will not be responsible for any claims, suits damages, losses, costs and expenses incurred directly or indirectly by you (unless resulting from our gross negligence or willful misconduct) resulting from:
- (a) the installation, operation, failure to operate, or maintenance of Electronic Commerce Facilities or other equipment or services;
  - (b) breakdown of or interruption of services in telecommunication lines;
  - (c) errors in messages transmitted through Electronic Commerce Facilities or other equipment or services;
  - (d) transactions submitted electronically to us and data produced using information transmitted through Electronic Commerce Facilities or other equipment or services;
  - (e) any failure or delay in the performance of any of the services;
  - (f) unauthorized or fraudulent use of or errors in the use of Electronic Commerce Facilities, or other equipment or services and any resulting unauthorized, fraudulent or erroneous Transactions; or
  - (g) your failure to receive any Communications under Section 17.8.
- 13.3 We are not responsible for equipment or services provided by third parties, including software vendors, Internet service providers, other providers of services in respect of Electronic Commerce Facilities, third party processors, providers of other equipment and services. Any approval by us of any such third party or certification of such equipment or services is for our own purposes and does not constitute a representation or warranty with respect to the third party or its equipment or services. You will not make any representation that we or a Payment Card Network endorse or certify such equipment or services.

- 13.4 You will indemnify and hold us harmless from and against any and all claims, suits, damages, losses, fines, penalties (including fines, penalties, and other charges by Payment Card Networks), costs and expenses (including legal fees) incurred directly or indirectly by us or a third party resulting from:
- (a) all claims of any kind by any Cardholder arising out of any Transaction;
  - (b) your failure or the failure of your employees or agents, partners, affiliates or third parties to use the Electronic Commerce Facilities, or other products or services in accordance with the terms and conditions of the Agreement, our rules, instructions, manuals or procedures in effect from time to time;
  - (c) unauthorized or fraudulent use of negligence or errors in the use of Electronic Commerce Facilities, or other equipment or services and any resulting unauthorized, fraudulent or erroneous Transactions;
  - (d) your failure to comply with any of your obligations set out in the Agreement, or with any requirements of which you are advised from time to time including requirements of any Payment Card Network (for greater certainty, with respect to your obligations under Section 14.9, your indemnity herein will apply whether your non-compliance occurred before or after the effective date of the Agreement); or
  - (e) your breach of any of your representations, warranties or covenants set out in the Agreement.
- 13.5 THIS AGREEMENT IS A SERVICE AGREEMENT. WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, COLLATERAL OR STATUTORY, AND WHETHER MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES OR CONDITIONS REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY EQUIPMENT OR SERVICES PROVIDED BY US UNDER OR INCIDENTAL TO THIS AGREEMENT.
- 13.6 In no circumstances will we or our respective affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, be liable under any legal or equitable theory (including tort, contract, strict liability and fundamental breach) for lost profits, lost revenues, lost business opportunities, loss of goodwill, exemplary, punitive, special, incidental, indirect or consequential damages, each of which is hereby excluded by agreement of the parties, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.
- 13.7 Notwithstanding anything in the Agreement to the contrary, our cumulative liability for all losses, claims, suits, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to the Agreement) will not exceed, (i) \$50,000; or (ii) the amount of fees received by us pursuant to the Agreement for services performed in the immediately preceding 12 months, whichever is less.
- 13.8 In no circumstances will we be liable in any way to you, any of your service providers or any other person with respect to any processing we may perform at your request relating to any Card, product or service not covered by the Agreement. You will indemnify and hold us harmless from any loss, damage or expense incurred by us in relation thereto.

#### **14.0 CONFIDENTIALITY AND DATA SECURITY**



- 14.1 In this Section, the term “**Confidential Information**” means any business, marketing, technical, scientific or other information of a party whether in written, oral, graphic, photographic, electronic or any other form, which, at the time of disclosure by that party to the other party, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential.
- 14.2 Except as expressly authorized by prior written consent of the other party, or as provided in the Agreement, each party agrees to:
- (a) limit access to any Confidential Information received by it to its employees and agents who have a need-to-know in connection with the Agreement;
  - (b) advise its employees and agents having access to the Confidential Information of the proprietary nature thereof and of the confidentiality obligations set forth in the Agreement;
  - (c) safeguard all Confidential Information received by it using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material;
  - (d) use all Confidential Information received by it solely for purposes of performance of the Agreement; and
  - (e) not disclose any Confidential Information received by it to any third party except as required for purposes of performance of the Agreement.
- 14.3 The obligations of confidentiality and restriction on use do not apply to any Confidential Information which the recipient of Confidential Information can establish:
- (a) was publicly available prior to the date of the Agreement or subsequently became publicly available through no fault of the recipient;
  - (b) was lawfully received by the recipient from a third party free of any obligation of confidence to such third party;
  - (c) was already in the possession of the recipient prior to the receipt thereof, directly or indirectly, from the disclosing party;
  - (d) is subsequently and independently developed by employees, consultants or agents of the recipient without reference to the Confidential Information disclosed under the Agreement; or
  - (e) in the case of us, is disclosed by us to any third party for the purpose of (i) managing our relationship with you; or (ii) enforcing an obligation owed to us by you, including a debt owed by you to us.
- 14.4 You will not, without our and the Cardholder’s consent, sell or provide to, purchase from, exchange with or disclose to any third party any Cardholder names, account numbers or any other information obtained from Cards. You will protect Cardholders from possible fraud by maintaining the confidentiality of their personal information. You will comply with all applicable laws dealing with the protection and disclosure of personal information about or belonging to Cardholders.

- 14.5 You will not use Cardholder names, Card numbers or other Transaction information embossed, encoded, or appearing in any other manner on the Card for any purpose other than for the sole purpose of assisting you in completing the Transaction, or as specifically required by law. You will not disclose or remit Cardholder names, Card numbers or other Transaction information embossed, encoded, or appearing in any other manner on a Card or any document or form evidencing such information to any third party other than to us or our designated agent. You will store all materials containing Cardholder names, Card numbers or other Transaction information, including without limitation Remote Transactions, in a secure area access to which is limited to selected personnel and, prior to discarding, will destroy this data in a manner rendering it unreadable.
- 14.6 You will maintain all materials and records, in any form, that contain Cardholder names, Card numbers or other Transaction information in a safe and secure manner.
- 14.7 You will notify us immediately of any suspected or confirmed loss or theft of Cardholder names, Card numbers or other Transaction information. In addition you will allow us or a Payment Card Network to inspect your premises and computers for the purposes of verifying that Cardholder names, Card numbers and other Transaction information are securely stored and processed, and will co-operate with the Payment Card Network and with us in any investigation of suspected or confirmed loss or theft of Cardholder names, Card numbers or other Transaction information. All of the costs incurred by us under this Section 14.7 constitute a debt that you must pay us on demand and that is subject to Article 10.0 of the Agreement.
- 14.8 If you make arrangements with a third party for the collecting, processing or storing of Cardholder names, Card numbers or other Transaction information, you will execute a written contract with such party that includes obligations regarding security and confidentiality of Cardholder names, Card numbers and other Transaction information and the right to inspect the third party's premises and computers that are similar to those in this Article 14.0.
- 14.9 You will comply with the Payment Card Industry Data Security Standard ("PCI DSS") and, as applicable, the Payment Application Data Security Standard ("PA-DSS"), the Visa Account Information Security Program and the MasterCard Site Data Protection Program and the Discover Information and Security Compliance program, details of which are available at [pcisecuritystandards.org](http://pcisecuritystandards.org), [www.visa.ca/en\\_CA/run-your-business/merchant-resources/merchant-security.html](http://www.visa.ca/en_CA/run-your-business/merchant-resources/merchant-security.html), [mastercard.com/sdp](http://mastercard.com/sdp) and [discovernetwork.com/merchants/data-security/disc.html](http://discovernetwork.com/merchants/data-security/disc.html).

The PCI DSS also applies to any agent or third party provider that you may use to store, process or transmit Cardholder data. In addition, such agents or third party providers must be registered with the applicable Payment Card Network. Therefore, you must:

- (a) notify us in writing of any agent or third party provider that engages in, or proposes to engage in, the provision of payment related services and/or the storing, processing or transmitting of Cardholder data on your behalf, regardless of the manner or duration of such activities; and
- (b) ensure that all such agents and third party providers are (i) registered with the applicable Payment Card Network; and (ii) comply with all applicable data security standards, including the PCI DSS.

You are solely responsible for the compliance of any and all third parties that are given access by you to Cardholder data and of any third party software that you may use, including for greater certainty, any POS solution, application or software for facilitating payment processing.

- 14.10 If the Agreement is terminated, we may be required to inform any Payment Card Network or other relevant party of the fact of, and reasons for, such termination, and your name and address and the names and other information of your principals, which could affect your ability to obtain Card processing services in future. You hereby consent to such disclosure and represent and warrant that you will obtain the consent of your principals to such disclosure. In addition, you agree to waive and hold us harmless from and against any and all claims you may have as a result of such reporting.
- 14.11 You will not disclose, and will maintain in a safe and secure manner, confidential information that we provide to you from or related to Payment Card Networks.

## **15.0 REPRESENTATIONS AND WARRANTIES**

- 15.1 As to each Transaction, you represent and warrant to us that:
- (a) it represents a bona fide sale of goods or services or if applicable, in the case of a Debit Card Transaction, the advance of money, in the ordinary course of business;
  - (b) it is in all respects as required by and in compliance with the Agreement and the law;
  - (c) you have no knowledge or actual notice of any circumstances that would impair enforceability of collection against the named Cardholder;
  - (d) the Transaction represents an obligation of the Cardholder for the amount of the Transaction;
  - (e) the amount charged for the Transaction is not subject to any dispute, setoff or counterclaim;
  - (f) the Transaction amount is only for the merchandise or services (including taxes, but without any surcharge on Card) sold or rented and, except for any delayed delivery or advance deposit Transactions expressly authorized by the Agreement, the merchandise or service was actually delivered to or performed for the person entering into the Transaction simultaneously upon your accepting and submitting the Transaction for processing;
  - (g) the Transaction does not represent the refinancing of an existing obligation of the Cardholder, including any obligation otherwise owed to you by a Cardholder;
  - (h) you have no knowledge or notice of any fact, circumstances or defence which would indicate that the Transaction was fraudulent or not authorized by the Cardholder or which would otherwise impair the validity or collectability of the Cardholder's obligation arising from such Transaction or relieve the Cardholder from liability with respect thereto;
  - (i) the Transaction submitted to us was entered into by you and the Cardholder;
  - (j) the Transaction was made in accordance with the Agreement and applicable Payment Card Network rules and operating regulations; and
  - (k) the Transaction is not a payment for a product or service that violates federal, provincial or local law in any jurisdiction that may be applicable.

## 16.0 IF YOU HAVE A PROBLEM OR CONCERN

If you have a problem or concern with any product or service provided under the Agreement, you may contact Bambora at 1-888-472-0811 or online at [www.bambora.com/en/ca/contact/support](http://www.bambora.com/en/ca/contact/support).

If you have a complaint regarding a potential violation of a consumer protection law or of the Code of Conduct for the Credit and Debit Card Industry in Canada, you may contact the Financial Consumer Agency of Canada ("FCAC") in writing at: 6th Floor, Enterprise Building, 427 Laurier Ave. West, Ottawa, Ontario K1R 1B9, or call toll free at 1-866-461-3222 (en français 1-866-461-2232) or through its website at [www.fcac-acfc.gc.ca](http://www.fcac-acfc.gc.ca). Please note that the FCAC does not become involved in matters of redress or compensation.

## 17.0 GENERAL PROVISIONS

- 17.1 **Display:** You agree to prominently display decals and signs provided or approved by us in your premises and promotional material indicating that you accept Cards. You will not more prominently display acceptance of a Card than that of any other Card. You will submit for our prior approval any advertising, which refers to us or to any Card or Credit Payment Card Networks. You will not make any representation that we or a Payment Card Network endorse your goods or services.
- 17.2 **Approval of Publicity and Communications:** You may not distribute or use any promotional or advertising materials, nor make any announcements or press releases, relating in any way to the Agreement, to us, Bambora, or to our respective trade-marks without our and Bambora's prior approval in writing. You are not permitted to use any name, logo, trade name, logotype, trade-mark, or service mark owned by a Payment Card Network or any representation of them in any advertising materials without our prior approval in writing. Any use by you of a name, logo, trade name, logotype, trade-mark, or service mark owned by a Payment Card Network for the sole purpose of promoting your acceptance of that Card must be in accordance with the applicable standards established from time to time by the applicable Payment Card Network.
- 17.3 **Discounts:** You may charge a customer a price for the goods and services you offer that is less than your ticketed or posted price for such goods and services (a "discount") if such customer uses cash or other form of payment to purchase such goods and services. In addition, you may apply differential discounts to different Card network brands. You must clearly communicate any discount at the point of interaction with your customers.
- 17.4 **Assignment:** The Agreement will be binding upon the parties and their heirs, successors and assigns. However, you are not permitted to assign the Agreement or any obligations without our prior written approval. In the event you become a debtor in bankruptcy or become subject to restructuring or insolvency proceedings, the Agreement cannot be assumed or enforced and we will be excused from performance hereunder. We may transfer, sell or otherwise assign the Agreement or any rights and obligations without your approval and without prior notice to you. If we do so, we may disclose information about you and the individuals who are your principals to anyone to whom we assign or may assign the Agreement, our rights and obligations.
- 17.5 **Headings and Interpretation:** The headings to each part of the Agreement are added for convenience and do not change the meaning of any provision of the Agreement. The terms "include", "includes" and "including" when used in the Agreement mean, respectively, "include without limitation", "includes without limitation" and "including without limitation".

- 17.6 **Waiver:** Any waiver by us of any of the provisions of the Agreement will not constitute a waiver of any other provision (whether similar or not), nor will such waiver constitute a continuing waiver of that particular provision unless expressly provided by us in writing.
- 17.7 **Severability:** If it is found by a court that any portion of the Agreement is invalid or unenforceable, the remainder of the Agreement will not be affected.
- 17.8 **Communication:** Statements and other communications, including notices under or in connection with the Agreement, are “**Communications**”) and will be sent by e-mail to your e-mail address appearing in our records. “Communications” also includes any communication to you regarding our fees and charges. At our option, we may also send Communications by any other method, including fax, web, or telephone. If you have more than one principal, a Communication sent to any one principal will be sufficient communication to you and to all principals. Communications sent by mail will be considered to have been received by you 5 days after we mail it or at the time of sending in the case of an electronic method or when received in the case of a Communication delivered by hand. You must advise us immediately of any change of address or other information to keep our records current. We are not responsible for your failure to receive a Communication if we send it to the address, or in accordance with other contact information for you, appearing in our records. You will be responsible for any Communications that we send to you even if you do not receive them or read them. For our mutual protection, we may record all telephone calls that relate to the services provided under the Agreement.
- 17.9 **Language:** It is the express wish of the parties that the Agreement and any directly or indirectly related documents be drawn up in English. Les parties ont exprimé la volonté expresse que cette convention et tous les documents s’y rattachant directement ou indirectement soient rédigés en anglais.
- 17.10 **Law:** You agree to comply with all applicable laws regarding the Agreement. The Agreement will be governed by and interpreted in accordance with the laws of the province or territory in Canada where we opened your merchant services account and the laws of Canada, as applicable, and you agree to submit to the jurisdiction of the courts of that province.
- 17.11 **Entire Agreement:** The Agreement is the complete agreement and replaces all prior communications, undertakings and agreements, written or oral, related to the subject matter of the Agreement.
- 17.12 **Business Changes:** You agree to inform us immediately of any material changes in the nature of your business or the way you do business including Remote Transactions.
- 17.13 **Financial Information:** In connection with any periodic or other review by us of your relationship with us, you will provide us any financial information about you and any Guarantor that we request from you.
- 17.14 **Relationship of Parties:** It is understood and agreed that the relationship of the parties is that of independent contractors and nothing herein contained may be construed as constituting a partnership, joint venture or agency between us and you.
- 17.15 **Addendum:** Any attached Addendum or any Addendum sent to you by us in hard copy or electronic format applies to our provision to you of services if you are engaged in the activity covered by the Addendum.
- 17.16 **Force Majeure:** Neither party will be liable for any loss or damage or for any delay or failure in performance due to acts beyond the control of such party whether or not such acts could

reasonably be anticipated (including acts of God, legislative, judicial or regulatory acts of any provincial or federal government, court or regulatory authority, acts of any of our subcontractors or any third party providers of goods or services to us, labour disruptions, blackouts, embargoes), except that non-payment of amounts due under the Agreement will not be excused by this provision.

## 18.0 DEFINITIONS

In the Agreement:

- (a) **“Account”** means the deposit account specified in the Application;
- (b) **“Acquire”** means to engage in the activities of authorizing Transactions, submitting such Transactions for settlement, and clearing and settling such Transactions;
- (c) **“Authorization”** or **“Authorize”** means the following:
  - (i) in the case of a Credit Card Transaction (other than an Other Card), approval by us that the Cardholder’s account with the issuer of the Credit Card has available credit. which is at least equal to the amount of the Transaction for which the Credit Card is presented;
  - (ii) in the case of a Debit Card Transaction, approval by the Third Party issuer of the Debit Card that the Cardholder’s account has available funds which is at least equal to the value of the Transaction for which the Debit Card is presented;
  - (iii) in the case of a Gift Card or Loyalty Card, approval by us to activate, issue, redeem, balance query or cancel the Gift Card or Loyalty Card; and
  - (iv) in the case of an Other Card Transaction, if we are the primary acquirer, the communication link which includes communication: (a) from you to us; (b) from us to the Third Party; (c) from the Third Party to us with the approval; (d) back to you with the approval; and (e) which approval is governed by the terms of the agreement between you and the Third Party.
- (d) **“Authorization Number”** means the number given by us to you which confirms our Authorization of the Transaction for which Authorization was requested;
- (e) **“Authorization System”** means the communication links between the computers, and the computers themselves, which are operated by or for you and us, which are used, among other things, to communicate Authorization Numbers from us to you upon your requesting Authorization Numbers;
- (f) **“Batch”** means a single submission by you to us of a group of Transactions (sales and credits) for settlement;
- (g) **“Business Day”** means any day, other than a Saturday, Sunday or statutory holiday observed in the Province of Ontario or the province or territory in Canada where we opened your merchant services account;
- (h) **“Card”** means a valid and unexpired Credit Card, a valid Debit Card or a valid Gift Card or Loyalty Card;

- (i) **"Cardholder"** means a person who is:
  - (i) in the case of a *Visa* Card, *MasterCard* Card, or Discover Card<sup>\*2</sup>, the person whose name is embossed on the card, or whose signature appears in the signature panel on the reverse of a card, and is authorized to use that card;
  - (ii) in the case of a Debit Card, the person presenting the card to you and to whom the card was issued by us, or a Third Party;
  - (iii) in the case of a Gift Card or Loyalty Card, the person presenting the card to you or to whom the card was issued by us, by you or a by a Third Party; or
  - (iv) in the case of an Other Card, the person whose name is embossed on the Other Card or as required by a Third Party.
- (j) **"Chargeback"** means the exercise by us of our right to return the Transactions and be reimbursed for such Transactions by you pursuant to the provisions of the Agreement;
- (k) **"Cheque"** means a cheque payable to you for the purchase of goods or performance of services for which you have been guaranteed payment by a Third Party subject to certain conditions and charges;
- (l) **"Confidential Information"** has the meaning set out in Section 14.1;
- (m) **"Communication"** has the meaning set out in Section 17.8;
- (n) **"Credit Card"** means a valid and unexpired *Visa* Card, a *MasterCard* Card, or a Discover Card, or another credit card (other than an American Express Card) that: (i) you have agreed with a third party or with us to honour; and (ii) we and the third party agree may be used through the Electronic Commerce Facilities;
- (o) **"Cut-Over"** means 12:00 a.m. Eastern Time, which time may be changed from time to time in our absolute discretion without notice to you;
- (p) **"Debit Card"** means any valid card bearing our name, our trade-name or the name of a Third Party, which card can be used, together with a personal identification number, for *Interac*® Direct Payment Transactions, or for debit card Transactions through the network of a Payment Card Network;
- (q) **"Discover Card"** means a valid and unexpired credit card issued by DFS Services LLC or one of its licensed issuers;
- (r) **"Electronic Capability"** means point of transaction capability where all of the following are true: zero off-line floor limit applies; Authorization response is obtained online; and Authorization response and transaction record data are captured electronically;
- (s) **"Electronic Commerce Facilities"** means the computer software and hardware that enables the processing of Transactions over the Internet;
- (t) **"Gift Card"** means a card issued to a person by you or by your service provider that enables the person to purchase goods or services up to the value of the card through a Remote Transaction;

- (u) **"Gift Card Program"** has the meaning set out in Section 7.3;
- (v) **"Gift and Loyalty Card Services"** means services which enable a customer to pay for goods and services by means of a Gift Card or qualify for rewards or discounts by means of a Loyalty Card;
- (w) **"Guarantor"** has the meaning set out in Section 12.1(c)(xi);
- (x) **"Loyalty Card"** means a card issued to a person by you or by your service provider that enables the person to qualify for rewards or discounts offered by you to holders of the card through a Remote Transaction;
- (y) **"Loyalty Card Program"** has the meaning set out in Section 7.3;
- (z) **"MasterCard Card"** means a valid and unexpired *MasterCard*<sup>\*1</sup> credit card;
- (aa) **"On-Line"** means connected to the Authorization System;
- (bb) **"Operating Standards"** means the operating, certification and security standards and specifications of The Toronto-Dominion Bank, the Payment Card Networks, EMVCo LLC. and PCI Security Standards Council, LLC., collectively, as applicable;
- (cc) **"Other Card"** means any credit card which is not a *Visa* Card, a *MasterCard* Card, or a Discover Card which you have agreed with a Third Party or with us to honour, and which credit card we and the Third Party agree may be used through the Electronic Commerce Facilities;
- (dd) **"PA-DSS"** has the meaning set out in Section 14.9;
- (ee) **"Payment Card Network"** means *Visa* Canada Corporation, *Visa* Inc., *Visa* International Service Association, MasterCard International Incorporated, DFS Services LLC, Amex Bank of Canada, Interac Inc., other card organizations as we may advise and related associations, and their successors, assigns, subsidiaries and affiliates as applicable;
- (ff) **"PCI-DSS"** has the meaning set out in Section 14.9;
- (gg) **"Privacy Laws"** means the federal *Personal Information Protection and Electronic Documents Act* (Canada), as amended or supplemented from time to time, and any applicable legislation now in force or that may in the future come into force governing the protection of personal information in the private sector applicable to the Parties or to the activities contemplated under the Agreement;
- (hh) **"Recurring Transaction"** means multiple Transactions processed at predetermined intervals not to exceed one year between Transactions, representing an agreement between you and a Cardholder to purchase goods or services over a period of time;
- (ii) **"Remote Transaction"** means any Transaction between you and a Cardholder over the Internet using an Electronic Commerce Facility;
- (jj) **"Third Party"** means a person who is:
  - (i) in the case of Other Cards and Cheques, a person with whom you have an agreement to accept an Other Card or Cheques;



- (ii) in the case of Debit Cards, either a member of Interac Inc. that issues and controls Debit Cards and associated personal identification numbers or a financial institution who we have entered into an agreement with regarding the provision of Debit Card services; or
- (iii) in the case of certain loyalty and gift card programs, the service provider in respect of the loyalty card program with whom you have an agreement.
- (kk) **“Transaction”** means the sale of goods or performance of services by you in respect of which a Credit Card, Debit Card or Gift Card was presented for payment;
- and
- (ll) **“Visa Card”** means a valid and unexpired VISA (R in circle) card bearing the distinctive blue, white and gold colour bands identical to that appearing on the CHARGEEX card or bearing the distinctive “winged Visa” dual colour Visa symbol (the “Visa Brand Mark”), or, if you are a merchant with Electronic Capability (as defined above), bearing the Visa Brand Mark with the Electron identifier (with all of which you hereby acknowledges you are familiar).

+ **Email Disclaimer:** For your protection, do not send confidential or personal information (e.g. Access Card number, account numbers, etc) via email, as it is not a secure method of communication. If your request is urgent or requires disclosure of confidential or personal information for resolution, please call us.

- \* Visa International Service Association/Licensed user of Mark.
- ® Trade mark of Interac Inc., TD Canada Trust licensed user of Mark.
- ®<sup>1</sup> Registered trade-mark of MasterCard International Incorporated, used under license.
- ®<sup>2</sup> Registered trade-mark of DFS Services LLC, used under license
- ®<sup>3</sup> Registered trade-mark of UnionPay International, used under license.