

**DIGITAL COMMERCE PAYMENTS INC. MERCHANT AGREEMENT****1. ABOUT THIS AGREEMENT**

1.1. **Parties.** The merchant ("**Merchant**", "**You**" and "**Your**") has applied to Digital Commerce Payments Inc. ("**DCPayments**", "**we**", "**us**", "**our**") for certain services (the "**Services**") as set out in the Merchant Application form (or subsequently requested by you in writing) to allow its customers to use credit and/or debit cards to purchase goods and services. This Digital Commerce Payments Inc. Merchant Agreement (the "**Agreement**") is entered into among the Merchant and DCPayments on its own behalf and on behalf of Digital Commerce Bank ("**DCB**"), the payment Acquirer. DCB is a party to this Agreement for Card acceptance services, as required by the Payment Network Rules. DCB has appointed DCPayments as its agent for the purpose of communicating with you and fulfilling and exercising its obligations and rights under the Agreement. DCPayments and DCB reserve the right to allocate among themselves their respective rights and obligations under the Agreement as they deem appropriate in their sole discretion. Each of Merchant, DCPayments and DCB will be referred to as a "**Party**". By executing and submitting your Merchant Application, you agree to the terms of this Agreement, subject to DCPayments' approval of such Merchant Application (which DCPayments may provide or decline in its sole discretion).

1.2. **Agreement.** The Agreement includes and incorporates by reference:

- 1.2.1.the Merchant Application;
- 1.2.2.the Disclosure of Fees;
- 1.2.3.the Information Summary Box;
- 1.2.4.the Cost per Transaction Disclosure;
- 1.2.5.the Payment Network Rules; and
- 1.2.6.the Data Security Requirements.

**2. DEFINITIONS**

- 2.1. "**Acquirer**" means a financial institution that processes Card Transactions for businesses.
- 2.2. "**American Express**" means Amex Bank of Canada.
- 2.3. "**Authorization**" means confirmation from the Card Issuer that the Cardholder's account has sufficient credit or funds, as applicable, available to support the Transaction and that the Card is not currently blocked. If Authorization is provided, it is still possible that a Transaction may not be valid and may be subject to a Chargeback or other adjustment.
- 2.4. "**Business Day**" means any day other than a Saturday, Sunday or any other day on which banks listed in Schedule I of the *Bank Act* (Canada) are not open for business in the Province of Alberta.
- 2.5. "**Card**" means any card representing any form of payment that is made available by a Card Issuer and for which we provide acquiring services to you.
- 2.6. "**Card Issuer**" means the financial institution or company that has provided a Card to a Cardholder.
- 2.7. "**Card Not Present (CNP)**" means that an Imprint of the Card is not obtained at the point-of-sale.
- 2.8. "**Cardholder**" means the person to whom a Card has been issued, or other authorized users of the Card. For the purposes of the Interac E-Transfer Request Money service, Cardholders means a person to whom you send a request for money or payment.
- 2.9. "**Cardholder Information**" means any personally identifiable information about a Cardholder, including but not limited to the Cardholder's name, phone number, email address, identification number or credit or debit card number or other information encoded or printed on a Card, or other personal information as

defined by the Personal Information Protection and Electronic Documents Act (Canada).

- 2.10. **"Chargeback"** means a Transaction that is charged back for any reason in accordance with Payment Network Rules and the payment for such Transaction is reversed.
- 2.11. **"Claim"** means any actual or threatened civil, criminal, administrative, regulatory, arbitral or investigative inquiry, action, proceeding, investigation, allegation or any other claim or demand of whatever nature or kind.
- 2.12. **"Code of Conduct"** means the Code of Conduct for the Payment Card Industry in Canada.
- 2.13. **"Confidential Information"** means non-public information that is confidential or proprietary, including the terms of the Agreement, the Fees or any other pricing or financial information, intellectual property, marketing plans, designs, business plans, specifications, and software. Confidential Information does not include information that (1) is or becomes publicly available through no fault of the receiving Party, (2) is already in the lawful possession of the Receiving Party, (3) is disclosed to the receiving Party by a third party without an obligation of confidentiality.
- 2.14. **"Cost per Transaction Disclosure"** means the cost per transaction disclosure provided as a cover page of the Agreement in accordance with the requirements of the Code of Conduct.
- 2.15. **"Data Security Requirements"** means Applicable Laws and guidelines pertaining to privacy such as the *Personal Information Protection and Electronic Documents Act* (Canada), Payment Network Rules, related to data security, data integrity and the safeguarding of Cardholder Information, the Payment Card Industry Data Security Standard ("PCI") (where and as applicable to Merchant's activities), Mastercard's Site Data Protection Program ("SDP"), Visa's Account Information Security Program ("AIS"), and such other

reasonable requirements provided by DCPayments or DCB from time to time.

- 2.16. **"Disclosure of Fees"** means the fee disclosure box and other fees box provided as a cover page of the Agreement in accordance with the requirements of the Code of Conduct.
- 2.17. **"Effective Date"** means the date that you first access the Services under this Agreement.
- 2.18. **"Equipment"** means Terminals, or other hardware or payment processing equipment provided to you by us (and includes Leased Equipment and Purchased Equipment) in connection with processing of Transactions, and any software embedded therein.
- 2.19. **"E-Commerce Services"** means the suite of electronic commerce services offered by DCPayments from time to time, which may include shopping cart functionality integrations with one or more Payment Networks or accessed through the DCPayments payment widget software or any DCPayments Gateway Application programming interface or other widgets provided by DCPayments.
- 2.20. **"Fees"** means all fees and payments charged by DCPayments and payable by you under this Agreement.
- 2.21. **"Imprint"** means the electronic data that is obtained by swiping or inserting a Card through a Terminal.
- 2.22. **"Information Summary Box"** means, if applicable to you, the information summary box provided as a cover page of the Agreement in accordance with the requirements of the Code of Conduct and provides a summary of key terms of this Agreement.
- 2.23. **"Interac"** means the Interac Association and Acxsys Corporation.
- 2.24. **"Interac E-Transfer Request Money"** means transfers on the Interac Network sent from accounts held by Cardholders at various financial

institutions and received by the Merchant at bank account held by the Merchant.

- 2.25. "**Law**" or "**Laws**" or "**Applicable Law**" means all laws, statutes, codes, ordinances, decrees, rules, regulations, by-laws, statutory rules, principles of law, published policies and guidelines, judicial or arbitral or administrative or ministerial or departmental or regulatory judgments, orders, decisions, rulings or awards, including general principles of common and civil law, and the terms and conditions of any grant of approval, permission, authority or license of any governmental authority, including without limitation, all consumer credit and consumer protection laws, and anti-money laundering, anti-terrorist financing and economic sanctions laws, and Financial Consumer Agency of Canada's codes of conduct applicable to us or you; and the term "applicable" with respect to Laws and in a context that refers to one or more persons, means that the Laws apply to the person or persons, or its or their business, undertaking or property, and emanate from a governmental authority having jurisdiction over the person or persons or its or their business, undertaking or property.
- 2.26. "**Leased Equipment**" means Terminals, or other hardware or payment processing equipment leased by you from us.
- 2.27. "**Losses**" means damages, losses, liabilities, costs, interest, expenses, fines, penalties, and fees (including legal fees and professional fees).
- 2.28. "**Marks**" means and registered or unregistered trademarks, tradenames or logos of DCPayments, DCB and the Payment Networks.
- 2.29. "**Mastercard**" means Mastercard International Incorporated and its affiliates, successors and assigns.
- 2.30. "**MATCH**" means the "Terminated Merchant File" and the "Member Alert to Control High Risk Merchants" file maintained by Mastercard and

Visa or any equivalent maintained by another Payment Network or DCB.

- 2.31. "**Merchant Account**" means a digital wallet maintained by DCPayments for the Merchant for crediting of collected funds and debiting of fees and charges under the Agreement. This is not a bank account insured by Canada Deposit Insurance Corporation.
- 2.32. "**Merchant Application**" means a set of documents which Merchant submits to DCPayments in order to be eligible to receive the Services described in this Agreement, as may be revised or updated during the Term.
- 2.33. "**Payment Network**" means American Express, Interac, Visa or Mastercard, or any other brand in conjunction with which Card Issuers provide Cards accepted by Merchant by agreement with DCPayments or any operators of funds transfer networks or any other electronic payment networks that the Merchant is provided access to in connection with this Agreement.
- 2.34. "**Payment Network Rules**" means the bylaws, rules, regulations, operating manuals, operating letters and policies, and data security standards, as may be amended from time to time, and established and imposed by Payment Networks in respect of Cards or funds transfer or electronic payment services received by the Merchant under this Agreement.
- 2.35. "**Purchase Price**" means the amount payable in respect of Equipment.
- 2.36. "**Purchased Equipment**" means Terminals, or other hardware or payment processing equipment purchased by you from us.
- 2.37. "**Prohibited Transaction**" means (a) a Transaction carried out in violation of Applicable Law and/or the Payment Network Rules; (b) a Transaction which is unauthorized by the Cardholder; (c) any other Transaction which may be determined by us or a Payment Network from time to time to be a Prohibited Transaction; (d) any Transaction for the

benefit of a country, organization, entity or person embargoed or blocked by any government, including those on sanctions lists identified by Canada; and (e) any Transaction carried out as part of a Restricted Business.

- 2.38. "**Restricted Business**" means any: (i) business or activity which is in violation of Applicable Law; (ii) business or activity which is undertaken for the benefit of a country, organization, entity or person embargoed or blocked by any government, including those on sanctions lists identified by Canada; and (iii) other businesses or activities listed at <https://dc-payments.ca/acquiring-legal-and-regulatory>.
- 2.39. "**Term**" has the meaning set out in Section 9.2.
- 2.40. "**Terminal**" refers to the point-of-sale device into which Cards are swiped, dipped, tapped, manually entered or automatically entered (in the case of recurring transactions) for purposes of processing Transactions.
- 2.41. "**Transaction**" means any sale of products or services, or credit for such (including a refund or adjustment), from Merchant for which the Cardholder makes payment or receives credit through the use of any Card and which is presented to us for collection or payment.
- 2.42. "**Transaction Receipt**" means the form of receipt required by us in order to process your Transactions that you are required to provide to the Cardholder as proof of a Transaction including without limitation the amount of the Transaction.
- 2.43. "**Transaction Record**" means the electronic record of a Transaction, including an Authorization Code, which is submitted to us in the form required by us in order to process your Transactions.
- 2.44. "**Visa**" means VISA Inc. and its affiliates, successors and assigns.

### **3. GENERAL REQUIREMENTS**

- 3.1. **Merchant Requirements.** It is your responsibility to ensure that you use our Services in accordance

with this Agreement, including the Payment Network Rules, the Data Security Requirements, any instructions or procedures provided to you by us, and all Applicable Laws, including those related to Cardholder Information, disclosures to Cardholders, consumer protection, and unfair or deceptive practices. You acknowledge that it is your responsibility to obtain the most recent versions of the Payment Network Rules and the Data Security Requirements and you must inform yourself about all Applicable Laws and provide adequate training to your personnel with respect to the Payment Network Rules, Data Security Requirements, and Applicable Laws. You agree and acknowledge that you have reviewed all such requirements and will abide by them. Without limiting the generality of the foregoing, you will comply with all Payment Network Rules regarding the use of Marks, Card acceptance, risk management, transaction processing and any products, programs or services that you, as a merchant, are required to or choose to participate in. All Merchants who will have access to Cardholder Data must obtain and maintain PCI certification from a third party assessor approved in writing by DCPayments.

- 3.2. **Advertising and Marks.** You must display the appropriate Payment Network Mark(s) to indicate which Cards you accept for payment at your place of business and on your website. Your use of the Marks is subject to DCPayments' direction and to the Payment Network Rules. You may use the Marks only during the term of the Agreement, and at all times subject to the restrictions and requirements set out in the Payment Network Rules, and you must immediately cease such use upon the termination of the Agreement. You must not use the Marks in any way which suggests or implies that DCPayments and/or the Payment Network(s) endorse any goods or services offered by you other than the Card Services. If approval of Payment Network(s) is required prior to use or display of the Marks, you agree and acknowledge

that you shall obtain such approval from the applicable Payment Network.

- 3.3. **Business Changes.** You must provide us with prompt notice of any changes to your business, your authorized representatives, the nature of your products and services, the ownership of your business (including a change in 25% or greater beneficial owners), the manner in which you carry on business, or any other change that may reasonably impact the level of risk to us associated with this Agreement.
- 3.4. **New Products.** If Payment Networks introduce new products or services, we are not obligated to provide and you are not obligated to accept those new products or services (which may have additional fees associated with them). You must provide your express consent to accept the new products or services before we will provide them to you.
- 3.5. **Financial Statements and Business Information.** You agree that upon request by us, you will promptly provide us with financial statements or any other information and documents that we may reasonably require to evaluate the risk and/or exposure to us or to the Payment Networks of the continued provision of Services to you. We will review your business and the associated risks on a regular basis and we may impose additional requirements on you in our sole discretion based on our assessment of the risks of this Agreement, such as the provision of security or collateral.
- 3.6. **Monitoring and Management.** We are entitled to monitor your Transactions. You agree that we may refuse, condition, or suspend any Transactions that we believe may violate this Agreement or Applicable Law; or that expose you, the Payment Networks, Cardholder, us, or others to risks that we consider unacceptable. If we come to know or suspect that your use of the Services has been for unauthorized, fraudulent, or illegal purposes, we may share any information related to such activity (including Cardholder Information) with the appropriate financial institution, Payment

Network, regulatory authority, or law enforcement agency consistent with our obligations under Payment Network Rules and Applicable Laws.

#### **4. CARD ACCEPTANCE AND TRANSACTIONS**

- 4.1. **Card Acceptance.** You will accept all valid Cards of the type you agreed in the Merchant Application to accept that are properly presented in accordance with the Agreement and Payment Network Rules by Cardholders as a form of payment. You must not establish a minimum or maximum Transaction amount as a condition of honouring a Card unless you are expressly permitted to do so by Payment Network Rules and Applicable Law. Except as permitted or specified in the Payment Network Rules, you must not request Cardholder identification as a condition of purchase. You will not engage in any practice that unfairly discriminates against or provides unequal treatment of any Payment Network relative to another.
- 4.2. **Surcharge.** Unless otherwise expressly permitted by the Payment Network Rules, Merchant may not require any Cardholder to pay a surcharge or any part of any discount rate or other charge imposed upon Merchant by the Agreement.
- 4.3. **Prohibited Transactions.** You will not process Prohibited Transactions or any Transaction that you have reason to believe may be a Prohibited Transaction, or which (given the information available to you), you should have known was a Prohibited Transaction. Without limiting the generality of the foregoing, you will not accept or present to DCPayments for collection any fraudulent Transaction. You may accept only Transactions arising from bona fide purchases from you for the goods and/or services for which you have been approved under the Agreement. You will not use the Services for Card Not Present Transactions, with the exceptions of Transactions processed through our E-Commerce Services, unless you have received our express consent and you agree to comply with all controls, policies and



procedures we require to ensure the security of Card Not Present Transactions. You agree that each Transaction will be in the ordinary course of your business and you will not use our Services to process Transactions for another person, entity or merchant. If you present a Transaction Receipt to us for a Prohibited Transaction, we may report you to MATCH.

- 4.4. **Cash to Cardholder.** You must not provide cash to a Cardholder. If a Card is a prepaid card issued by a Payment Network, the Card must not be redeemed for cash by you.
- 4.5. **Returns, Refunds and Cancellations.** If you restrict the return of goods or cancellation of services, you must clearly disclose to a Cardholder your return, refund, exchange, and cancellation policies in a conspicuous manner prior to the time of purchase in the manner specified by the applicable Payment Network Rules and on the Transaction Receipt. If a purchase made using a Card is returned, a credit or refund must be issued to the same Card by completing a Transaction Receipt and not in cash. You must provide us with a copy of your return and cancellation policies. Any change to such policies must be submitted in writing to us not less than fourteen (14) days prior to the proposed effective date of the change and must be approved by us prior to going into effect, which approval will not be unreasonably withheld.
- 4.6. **Authorization.** You will obtain an Authorization for all Transactions. You will not obtain or attempt to obtain Authorization unless you intend to submit a Transaction for the authorized amount if Authorization for the Transaction is given. You acknowledge that an Authorization provides only that the Cardholder account has sufficient credit or funds available to cover the amount of the Transaction, and that an Authorization is not a guarantee that the Transaction will not be subject to dispute or Chargeback and does not warranty the Cardholder's identity.
- 4.7. **Transaction Receipt.** You will issue a Transaction Receipt for each Transaction and provide such

Transaction Receipt to the Cardholder. You agree that each Transaction Receipt represents an obligation of the Cardholder and will allow the Card Issuer to collect the value of the Transaction from the Cardholder. You will keep and maintain copies of all Transaction Receipts for at least twenty-four (24) months. We have the right to inspect and copy your records relating to Transactions at any time during normal business hours. If we ask you to provide us with a copy of a Transaction Receipt within twenty-four (24) months of a Transaction, you will provide a copy to us within five (5) business days of our request. If you do not provide the requested Transaction Receipt, or the Transaction Receipt you provide does not correspond in all respects to the Transaction Record you sent to us of the same Transaction, the amount of the Transaction will be a debt payable to us and DCB and will be collected by us from you.

## 5. FEES

- 5.1. **Fees.** You will pay us all of the fees and charges for the Services set out in the Disclosure of Fees plus applicable taxes (the "**Fees**").
- 5.2. We can change the Fees or the Fee structure applicable to you, including by implementing new Fees or a new Fee structure, by giving you between thirty (30) and sixty (60) days' prior written notice.

## 6. SETTLEMENTS AND ADJUSTMENTS

- 6.1. **Presentment.** DCB will accept all valid Transaction Receipts presented to DCPayments by you for Transactions made in accordance with the Agreement and will present the same to the appropriate Card Issuers for collection against Cardholder accounts. You must transmit Transaction Receipts to us on the same day or next Business Day immediately following the day that such Transaction Receipts have been originated and via electronic data transmission in accordance with DC Payment's procedures.
- 6.2. **Settlement.** DCB will only credit the value of collected Transaction Receipts to your Merchant Account and reserves the right to adjust amounts

collected to reflect the value of Chargebacks (actual and anticipated), Fees, expenses, and items for which we did not receive final payment. DCB will credit your Merchant Account for such amounts within a reasonable period of time (based on either a daily or weekly settlement per the allocation you made in the Merchant Application). DCB reserves the right to modify the terms of settlement. You acknowledge your financial institution is responsible for crediting the Merchant Account after receiving the transfer of funds from us, and you agree that it is your responsibility to pay any related deposit or other processing fees charged by your financial institution. You also agree that we/DCB may withhold the Transaction proceeds or other credits or payments under the Agreement if we suspect or know: (i) of a Prohibited Transaction; (ii) that there has been an incident pursuant to Section 7.5 of this Agreement or potential or actual fraud; or (iii) if we/DCB are required to do so by a court order or Applicable Law.

**6.3. Merchant Payment Obligations.** You will pay us the following:

- (a) all Fees;
- (b) costs and expenses incurred by us or DCB in connection with the provision of the Services to you including the costs of audits, reviews, other investigations performed in accordance with the Agreement;
- (c) all Chargebacks;
- (d) any fines or penalties imposed on us or you by the Payment Networks or governmental or regulatory authority for your failure to comply with this Agreement, the Payment Network Rules, the Data Security Requirements or Applicable Laws;
- (e) any other fines or penalties imposed on us or you by a third party resulting from your use of the Services in a manner not permitted by the Agreement;

- (f) the Purchase Price of Equipment leased by you that is not returned to us when required;
- (g) the Purchase Price of any Purchased Equipment which you have agreed to purchased by you, plus other shipping costs, taxes, duties and tariffs contemplated by Section 10; and
- (h) any damages incurred by us as a result of your failure to comply with the terms of this Agreement including legal fees on a solicitor and own client basis.

(collectively referred to as the "**Merchant Payment Obligations**").

**6.4. Holdback.** The Merchant acknowledges and agrees that we have the right, at any time, to require that the Merchant fund a holdback amount, to secure the performance of settlement obligations, contractual obligations owed to us, any Merchant Payment Obligations, or other payment obligations based on our assessment of your transaction volume and transaction risk, or any additional costs that DCPayments determines, in its sole discretion, are owed under or related to this Agreement.

**6.5.** The amount of such holdback amount is determined by DCPayments, in its sole discretion.

**6.6.** The Merchant acknowledges that, should it fail to fund the holdback amount directly, DCPayments has the right, in its sole discretion and without notice, to set-off against any settlement amount owing to the Merchant.

**6.7. Pre-Authorized Debit.** You authorize us to instruct any financial institution to debit any of your bank accounts and to transfer to us funds in the amount of the Merchant Payment Obligations. You will enter into and maintain a pre-authorized debit agreement to unconditionally authorize your financial institution to act upon our instructions in

order to collect the Merchant Payment Obligations.

6.8. **Collection of Merchant Payment Obligations.** You acknowledge and agree that we may pursue any one or combination of the following options to collect any of the Merchant Payment Obligations from you which are due and payable pursuant to the Agreement:

- (a) set-off against all or some of your Transaction proceeds;
- (b) deduction or set-off against funds in the Merchant Account;
- (c) debit your bank account in accordance with Section 6.4 and the applicable pre-authorized debit agreement; or
- (d) demand immediate payment from you for any outstanding amounts.

6.9. **Statement Verification.** You will receive a monthly invoice and a monthly statement from us related to the Merchant Account (collectively referred to as the "**Statement**") which you will access electronically through a self-serve portal available online at the DCPayments website located at [www.dc-payments.ca](http://www.dc-payments.ca). You must notify us promptly if you cannot access your Statement within seven (7) calendar days of the date that it is normally available. DCPayments is not responsible if you do not receive your Statement. Upon receipt of your Statement, you must examine your Statement and you must notify DCPayments in writing within thirty (30) days from the date of the Statement of any discrepancies, errors, omissions or objections with respect to any information contained in the Statement including inaccurate Transactions or Fees, entry or transaction posted to it within thirty (30) calendar days from the Statement date. If you do not notify us as required, the Statement, entries, Transactions and Fees (except as to any alleged errors so notified) will be deemed to be conclusively correct, complete, and properly binding upon you and you are not entitled to be credited with any sum not credited

in the Statement. You release DCPayments and DCB from any claim relating to any entry included or omitted to be included on the Statement if notification is not provided by of the inaccuracy within thirty (30) calendar days from the Statement date and neither DCPayments and DCB shall have liability to you for any such entry or Transaction after such thirty (30) calendar day period.

## 7. DATA SECURITY AND CONFIDENTIALITY

7.1. **Information Use Limitations.** You will collect, use and disclose the Cardholder Information for the sole purpose of processing Transactions (including providing such Cardholder Information to us for handling, use, processing and such other purposes expressly set out in the Payment Network Rules). You may not sell, disclose, or otherwise make Cardholder Information available, in whole or in part, in a manner not provided for in the Agreement or permitted by Payment Network Rules or Applicable Laws, without the prior written consent of DCPayments.

7.2. **Third Party Requirements.** You are not permitted to use a third party, including any software products, hardware or Equipment supplied by a third party, to process, transmit or store Cardholder Information unless you receive our prior written consent (an "**Authorized Third Party Provider**"). You are responsible for ensuring that any such Authorized Third Party Provider is compliant with the Payment Network Rules, the Data Security Requirements, and all Applicable Laws related to Cardholder Information.

7.3. **Security Standards.** You represent, warrant and covenant that you will at all times throughout the term of the Agreement, you will maintain appropriate administrative, technical and physical safeguards for all Cardholder Information (including, but not limited to those required by the Payment Network Rules and the Data Security Requirements) to ensure the confidentiality of Cardholder Information, protect against any anticipated threats or hazards to the security or



integrity of Cardholder Information and protect against unauthorized access to or use of Cardholder Information.

- 7.4. **Compliance.** You will provide us with information and documentation upon request (including, without limitation, a report on compliance issued by a Qualified Security Assessor from PCI and/or a self-assessment questionnaire as prescribed by PCI) from time to time for the purposes of verifying that you and any Authorized Third Party Provider are complying with the Payment Network Rules, the Data Security Requirements, and all Applicable Laws, and to enable our compliance with Applicable Laws and Payment Network Rules. If you fail to meet the foregoing requirement, DCPayments may retain a Qualified Security Assessor at your sole cost and expense, in order to obtain the necessary report. You will provide, if requested by us, an annual certification in a form acceptable to us certifying that you are in compliance with the Data Security Requirements and other provisions of the Agreement (including matters related to compliance with Applicable Laws).
- 7.5. **Data Breach.** You will inform us within twenty-four (24) hours if you or any Authorized Third Party Provider have suffered or if you suspect you have suffered any potential or data breach, card skimming incident, or other compromise involving the security of Cardholder Information or Confidential Information of DCPayments. You will, upon request: (a) provide us information about your efforts to mitigate or eliminate the impact of such potential or actual data breach; (b) conduct a root cause analysis of the potential or actual data breach within twenty (20) days of our request; and (c) put in place a corrective action plan approved by us (acting reasonably) with specified timelines to reduce or eliminate the risk of such circumstances being repeated, and you will comply with such corrective action plan.
- 7.6. **Investigations.** You will provide us with cooperation and assistance in the investigation of

any potential or suspected data breach, card skimming incident or other compromise involving the security of Cardholder Information or Confidential Information of DCPayments, including permitting us, DCB, a Payment Network or parties authorized by us to inspect your or any Authorized Third Party Provider's premises and all software and hardware used in connection with the processing, transmission or storage of Cardholder Information. You will supply us with any information or documentation reasonably requested by us related to any such investigation. You will cooperate with us in notifying regulators (if required and applicable) and notifying affected Cardholders (if applicable). Unless the unauthorized access was due to the breach by DCPayments of its obligations, you will pay for the costs of any investigations and notifying affected Cardholder(s).

- 7.7. **Access Requests.** You will cooperate with us in responding to any request for access to Cardholder Information by an individual and in responding to any complaints or investigations by individuals with respect to Cardholder Information.
- 7.8. **Confidential Information.** Without limiting Sections 7.1 to 7.7 of the Agreement, each Party will maintain reasonable safeguards (and in any event safeguards that are no less protective than those it employs to protect its own Confidential Information) to protect the other Party's Confidential Information, and neither Party will disclose the other Party's Confidential Information, except to (i) its directors, officers or personnel ("**Representatives**") with a need to know in order for, and solely to the extent required for, the receiving Party to comply with its obligations under the Agreement, provided that such Representatives are subject to confidentiality obligations substantially similar to those contained in the Agreement, and (ii) as required by Applicable Law, the Payment Network Rules or by

either Party's regulatory or governmental authority.

## **8. EXCLUSIVITY**

- 8.1. **Exclusivity.** You and your affiliates will not enter into an agreement or arrangement with anyone else regarding the acceptance of Cards. If we provide Interac E-Transfer Request Money services to you or if we rent Terminals to you, you agree that you and your affiliates will not enter into an agreement or arrangement with anyone else regarding Interac E-Transfer Request Money services or rental of Terminals.

## **9. TERM AND TERMINATION**

- 9.1. **Initial Term.** This Agreement will commence on the Effective Date and will continue for a period of five years (the "**Initial Term**").
- 9.2. **Renewal Period.** Unless a non-renewal notice has been delivered in accordance with Section 9.3, the term of this Agreement will be automatically extended for successive terms of six (6) months (each, a "**Renewal Period**" and together with the Initial Term, the "**Term**") after the end of the Initial Term or current Renewal Period (as applicable) without any further action or confirmation required from any Party.
- 9.3. **Non-Renewal Notice.** Any Party may notify the other Party that the term of this Agreement will not be automatically extended by delivering an unconditional written notice to the other Party at least 45 days before the end of the Initial Term or Renewal Period stating that the Party is irrevocably electing to not renew the term of this Agreement.
- 9.4. **Termination by DCPayments.** Notwithstanding that the Term has not elapsed, the Agreement may be terminated by DCPayments upon the occurrence of any of the following events:
- (a) if bankruptcy, insolvency, liquidation or dissolution proceedings are commenced by or against you, or a receiver, liquidator or similar person is appointed to protect your

assets for the benefit of its creditors, the Term will end immediately upon written notice being delivered to you by DCPayments;

- (b) if we determine, in our sole discretion, that the continuation of the Agreement will impose a reputational, regulatory or financial risk to us, DCB or a Payment Card Network including as a result of your failure to comply with Applicable Law, engaging in fraudulent activity or a change in your business, the Agreement may be terminated immediately by DCPayments in its sole discretion upon written notice to you;
- (c) if you receive an excessive amount of Chargebacks or if the number of Transactions processed by you on fraudulent or counterfeit cards is excessive (the determination of what constitutes "excessive" will be made by us in our sole discretion or by a Payment Card Network), we may terminate this Agreement immediately upon written notice to you;
- (d) if we reasonably believe that you have been involved in Prohibited Transactions including but not limited to fraudulent transactions;
- (e) if a Payment Network directs us to terminate the Agreement or limit the Services provided to you, we may terminate this Agreement immediately upon written notice to you;
- (f) if you are in breach of any term of this Agreement and such breach has not been cured within thirty (30) days upon receiving notice from us of such breach, then this Agreement may be immediately terminated by us; or
- (g) if we decide to terminate this Agreement for convenience for any reason, we may do so

by providing you with thirty (30) days' written notice of termination.

9.5. **Termination by Merchant.** Notwithstanding that the Term has not elapsed, the Agreement may be terminated by you upon the occurrence of any of the following events:

- (a) if bankruptcy, insolvency, liquidation or dissolution proceedings are commenced by or against us, or a receiver, liquidator or similar person is appointed to protect our assets for the benefit of our creditors, the Term will end immediately upon written notice being delivered by you to DCPayments;
- (b) if we are in breach of any term of this Agreement and such breach has not been cured within thirty (30) days upon receiving notice from you of such breach, then this Agreement may be immediately terminated by you;
- (c) if we have provided you with notification of a Fee increase, the introduction of a new Fee, or a reduction in applicable posted interchange rates by a Payment Network and the savings have not been passed through to you in full, you may terminate this Agreement by providing us with written notice within seventy (70) days of the notification; or
- (d) if we exercise any right to unilaterally amend the Agreement or to impose additional requirements on you pursuant to Section 3.5 or 17.3, you may terminate this Agreement by providing us with written notice within seventy (70) days of the notification.

9.6. **Termination Payment.** If the Agreement is terminated prior to the end of the Initial Term or Renewal Period in accordance with Section 9.4(a), 9.4(b), 9.4(c), 9.4(d), 9.4(e) or 9.4(f) you will be required to pay an amount equal to the number of months remaining in the Initial Term or Renewal

Period, as applicable, multiplied by an amount equal to the average Fees payable to DCPayments under this Agreement in the six month period prior to the date that termination notice is delivered (the "**Termination Payment**"), which will be immediately due and payable. This Termination Payment is in addition to any other rights or remedies to which we may be entitled at law.

9.7. **Effect of Termination.** Upon termination of the Agreement:

- (a) your right to accept Transactions immediately terminates. We will not process any Transaction accepted by you after the date of termination;
- (b) for any Transaction accepted on or prior to the date of termination, we will accept all Transaction Receipts presented by you in accordance with Section 6.1 up to the next Business Day following the Transaction, following which we will cease to accept any further Transaction Receipts and present them for payment to Card Issuers;
- (c) you will remain responsible for paying all amounts due to us under the Agreement, including in respect of Chargebacks;
- (d) you will return all Leased Equipment to us in the same condition it was provided to you, normal wear and tear excepted;
- (e) you will return or destroy all Confidential Information of DCPayments Inc. upon request (other than as required to be retained by you by Applicable Laws);
- (f) any amounts due to us will accelerate and be immediately due and payable, without any notice or other act whatsoever by us;
- (g) if required by Payment Network Rules, we will report you on the MATCH System;
- (h) Merchant obligations pertaining to Data Privacy Requirements and Cardholder Information contained in the Agreement, including but not limited to those contained

in Section 7 of the Agreement will survive indefinitely beyond termination of the Agreement; and

- (i) Within sixty (60) days of the date of termination of this Agreement, we will credit your Merchant Account with all settlement funds owing to you under this Agreement less a holdback equal to any outstanding, potential or anticipated fees, charges, adjustments, fines, applicable taxes, Chargebacks and any other amounts which may be or become payable by you pursuant this Agreement after its termination as determined by us, acting reasonably. The holdback amount will be used to settle any such amounts that become due in the six (6) month period following termination, and the unused portion of the holdback will be credited to your Merchant Account following that period. If the holdback is insufficient to cover all outstanding amounts that become due in such period, you will pay us any such amount, promptly on written notice.

## **10. OPTIONAL SERVICE – EQUIPMENT**

- 10.1. **Equipment.** If at any time we approve (at our sole discretion) your request to use our Equipment, we will arrange for the Equipment to be delivered and installed, provided that you ensure we are granted reasonable and safe access to the premises to which you direct us. In the event we deliver and install Equipment, you agree that you will either (i) lease the Equipment or (ii) purchase the Equipment. You will use and be responsible for such Equipment pursuant to this Section 10 for the duration of the Term.
- 10.2. **Leased Equipment.** If you return Leased Equipment early or terminate the Equipment lease prior to the expiry of the Term, you shall be responsible for the payment of all lease Fees due for the remainder of the Term. Any Leased Equipment we provide to you is our property and will not become a fixture under any circumstances.

You will not grant a right or interest including a security interest in any of the Leased Equipment. You are required to return the Leased Equipment to us at the end of the Term in the same condition it was provided to you, normal wear and tear excepted. If you fail to do so, we reserve the right to charge you for our costs of collection of such Leased Equipment or the full Purchase Price in respect of the unreturned Equipment. You will permit us to enter the premises at any time, including following the Term to collect such Leased Equipment and to obtain any consents or other permissions from property owners, landlords, or management companies as required to allow us to collect such Leased Equipment when you are no longer permitted to use it pursuant to this Agreement.

### **10.3. Purchased Equipment.**

- (a) Unless otherwise agreed in writing by us, the Purchase Price for Purchased Equipment excludes taxes and shipping costs. When you agree to purchase Equipment, the Purchase Price for such Equipment will be invoiced to you in addition to other Fees payable by you, including applicable taxes and shipping costs. Following payment of such amounts, title the Purchased Equipment will pass to you upon our carrier unloading the Purchased Equipment at the location provided. You must provide information to us upon request in order to allow us to assess the applicability of taxes, duties or tariffs on your purchase. We will show you the final amount due before you confirm your purchase based on the information we have at such time. If taxes, duties, or tariffs are assessed against us, you will reimburse us for, and indemnify us against, such amounts.
- (b) Once you confirm your purchase, we will deliver the Purchased Equipment to you at the address you provide, subject to

hardware and carrier availability at the time of your purchase. We will not be required to deliver Purchased Equipment to any jurisdiction in which we do not conduct business. We will use commercially reasonable efforts to provide you with tracking information for our purchased once confirmed.

- (c) You may only use Purchased Equipment for your own use. You shall not resell Purchased Equipment without our prior written consent. You shall not ship Purchased Equipment outside of the country to which it was delivered other than as directed by us. Your use of the Purchased Equipment does not confer upon you any additional ownership or use rights to our software or services which are not expressly provided for in this Agreement.

**10.4. Use of Equipment.** You agree to use the Equipment in accordance with any manuals, operating instructions and procedures that we or our designated service provider may provide to you. You agree to reimburse us for any Losses we incur because you did not use the Equipment according to such manuals, operating instructions or procedures. You must safeguard the Equipment against any theft or tampering. You will ensure that any other devices, software or hardware that you use in conjunction with the Equipment is compatible with the Equipment. For clarity, you are not permitted to install any software on the Equipment that is not set out in the manuals or operating instructions, or otherwise expressly authorized by us. You will reimburse us for any Losses resulting from any use or misuse of the Equipment and any failure to grant reasonable access at the times required.

**10.5. Telecommunications.** You are responsible for arranging or and paying for all telecommunications facilities needed in order for the Equipment to connect with our systems. You are responsible for installation, operation, compatibility and security of your

telecommunications systems. We are not responsible for any failure of your telecommunications system or failure of the Equipment to transmit Transactions through the telecommunications system.

**10.6. Repairs and Services.** Any repairs to the Equipment that we provide must be performed by us or our designated service provider. You agree that you will not permit any party, other than us or our designated service providers, to provide service and maintenance to the Equipment. We will rectify issues with any Equipment that we provide to you, including the provision of parts, for the term of the Agreement, provided, however, that we are not responsible for any maintenance, repairs or replacements caused or contributed to as a result of your negligence, willful misconduct or failure to comply Section 10.4 of this Agreement or any other term of this Agreement. Without limiting the generality of the foregoing, we will not be responsible for the cost of maintenance, repairs or replacements required as a result of telecommunications issues, electrical problems, accidents, spilled liquids, vandalism, damage due to dropping or other misuse, disasters such as fire, flood, wind, lightning or other acts of God, or any modifications or additions that you make to our Equipment. If we need to replace Leased Equipment for any reason, we may replace it with any other Equipment so long as the replacement enables you to perform the services described in the Agreement.

**10.7. Equipment Location.** You will keep the Equipment at the location where we deliver and install it. You will ensure that we have reasonable and safe access to the Equipment at all times. You agree that you will not move the Equipment to another location without our prior written consent. You will pay all expenses to have it moved to and installed at another location. You agree that only



our designed service provider will complete such moves and installations.

10.8. **Third Party Equipment.** If you use Equipment that is not provided by us, it is your responsibility to ensure that it complies with the Payment Network Rules and the Data Security Requirements at all times. You must seek our consent, which will not be unreasonably withheld, to use Equipment not provided by us to allow us to ensure that your Equipment meets our specifications.

10.9. **Cancellation of Contactless.** If you choose to accept contactless payments at the point-of-sale, you will be able to cancel the contactless acceptance on your Equipment for each Payment Network, upon thirty (30) days' notice. Such cancellation will not give rise to a penalty and will not impact other aspects of this Agreement.

## 11. OPTIONAL SERVICES – E-COMMERCE

11.1. **License.** If we provide you with E-Commerce services, you are granted a personal, non-transferable, non-exclusive, revocable and limited license to use our e-commerce software that provides Authorizations, generates Transaction Records and Transaction Receipts and submits the Transactions Records to DCPayments for collection ("**E-Commerce Services**"). Other than the license granted in this Section 11.1, we have not granted any rights to you to the E-Commerce Services and we will retain all ownership rights, title, and interest in and to the E-Commerce Services.

11.2. **Use of E-Commerce Services.** You agree to use the E-Commerce Services in accordance with any instructions and procedures that we may provide to you. You will not modify, reverse engineer, or otherwise use or integrate into any other software, systems or program any software that forms part of the E-Commerce Services in any manner which is not expressly permitted by us (including in any manner which is infringing, illegal, or harmful to our systems, property, software, or hardware (or that of any third party)). Your use of

E-Commerce Services will be subject to all applicable end user license terms and other terms of use included in the E-Commerce Services software applications (if any).

### 11.3. E-Commerce Services Merchant Obligations.

- (a) You are solely responsible for accepting, processing or filling any orders for purchases by your customers and for providing customer support to them.
- (b) You will be provided with user access credentials and passwords to allow you to access the E-Commerce Services (the "**Credentials**"). You are responsible for the security of the Credentials and you will establish and maintain procedures to protect them. Failure to protect the Credentials may result in unauthorized parties gaining access to the E-Commerce Services and you will be responsible for any unauthorized access.
- (c) You are solely responsible for the content and promotion of your website. You will not display any content on your website that indicates that DCPayments, DCB and any Payment Network endorses your products or services. You will not include any content on your website that is illegal or that could (in DCPayments' sole determination, acting reasonably) adversely impact the reputation of DCPayments, DCB or any Payment Network including any content that is discriminatory.
- (d) You are responsible for arranging or and paying for an internet connection in order to access the E-Commerce Services. You are responsible for the installation, operation, compatibility and security of your internet connection. We are not responsible for any failure of your internet connection including failure to transmit Transactions.
- (e) You will be solely responsible for the security of information on your website and

on its own computer systems and servers, including Cardholder Information. You will use commercially reasonable efforts, at your sole cost and expense, to maintain the security of your systems, including creating firewalls to protect against unauthorized access and any other Data Privacy Requirements. Without limiting your obligations pursuant to Section 7, you must immediately notify DCPayments of any actual or suspected security breach involving Cardholder Information and allow DCPayments, at your expense, to investigate and implement any measures reasonably required to prevent future occurrences of any such breaches.

- (f) You are responsible for verifying the accuracy and completeness of all Transactions submitted and processed through the E-Commerce Services. DCPayments and DCB will not be liable or responsible for any improperly processed Transaction or illegal or fraudulent access to the E-Commerce Services.

## **12. OPTIONAL SERVICES – REQUEST MONEY INTERAC E-TRANSFER**

12.1. **Requirements.** If we provide you with Request Money Interac E-Transfer Services, you must comply with the Interac e-Transfer Operating Regulations ("**Operating Regulations**"). Without limiting the generality of the foregoing, you agree that:

- (a) You are defined as a Commercial Customer for the purposes of the Operating Regulations.
- (b) You do not and shall not engage in any Wrongful Activity (as defined in the Operating Regulations) or any other activity that may pose a risk to the Interac e-Transfer Request Money Service and/or its participants, including screen-scraping, data mining, or misuse of data.

- (c) You shall not use any trademarks of Interac Corp. in conjunction with its use of the service including but not limited to the Interac® trademark unless you are granted a license in writing to do so by Interac Corp.

## **13. OPTIONAL SERVICES - DCGLASS**

13.1. **License.** If you download DCGlass software or applications to your authorized mobile device, you may use your mobile device as a payment Terminal to process Transactions. If you elect to use this service, you are granted a personal, non-transferable, non-exclusive, revocable and limited license to use our DCGlass software or applications that provides Authorizations and generates Transaction Records ("**DCGlass Services**").

13.2. **Use of DCGlass Services.** You agree to use the DCGlass Services in accordance with any instructions and procedures that we may provide to you. DCGlass Services cannot be used for Card Not Present Transactions. You will not modify, reverse engineer, or otherwise improperly use any software that forms part of the DCGlass Services.

13.3. **Restrictions.** You may not, nor may you permit any third party, directly or indirectly, to:

- (a) directly or indirectly export the DCGlass Services, which may be subject to export restrictions imposed by Canadian law, including the *Exports and Imports Permit Act* (Canada);
- (b) access or monitor any material or information on any DCPayments system using any robot, spider, scraper, or other automated means;
- (c) except to the extent that any restriction is expressly prohibited by law, violate the restrictions included as part of any Service, work around, bypass, or circumvent any of the technical limitations of the DCGlass Services, use any tool to enable features or functionalities that are otherwise disabled in the DCGlass Services, or decompile,

disassemble or otherwise reverse engineer the DCGlass Services;

- (d) perform or attempt to perform any actions that would interfere with the proper working of the DCGlass Services, that would prevent or hinder access to or use of the DCGlass Services by our other customers, or impose an unreasonable or unmanageably large load on our systems or hosting infrastructure;
- (e) copy, reproduce, alter, modify, create derivative works, publicly display, republish, upload, post, transmit, resell or distribute in any way material, information or DCGlass Services from DCPayments;
- (f) use and benefit from the DCGlass Services via a rental, lease, timesharing, service bureau or other arrangement without our express written consent;
- (g) use the DCGlass Services for any Restricted Business;
- (h) use the DCGlass Services in any way which is harmful, illegal or unsafe;
- (i) use the DCGlass Services in any way, or in connection with any other technology or property that infringes on the rights of other parties; or
- (j) use the DCGlass Services Technologies except as expressly allowed under the Agreement.

If we reasonably suspect that the DCGlass Services or your Merchant Account has been used for an unauthorized, illegal, or criminal purpose, you give us express authorization to share information about you, your DCPayments Account, and any of your transactions with law enforcement.

- 13.4. **Compatible Mobile Devices and Third Party Carriers.** We do not warrant that the DCGlass Services will be compatible with your mobile device or carrier. Your use of the DCGlass Services may be subject to the terms of imposed by the

applicable mobile device manufacturer or telecommunications carrier. You may not use a modified or "jail-broken" device to use the DCGlass Services if the modification is contrary to the manufacturer's software or hardware guidelines or controls.

- 13.5. **Security.** We have implemented technical and organizational measures designed to secure personal information from accidental loss and from unauthorized access, use, alteration, or disclosure. However, we cannot guarantee that such measures will always be effective at preventing third parties from accessing or using such information for improper purposes. Subject to the terms of this Agreement, you provide personal information at your own risk. You are responsible for safeguarding your password(s) and for restricting access to the DCGlass Services. from your compatible mobile devices and computer(s). You will immediately notify us of any unauthorized use of your password, the DCGlass Services or Merchant Account or any other breach of security.
- 13.6. **Ownership.** We reserve all rights not expressly granted to you in this Agreement. As between you and us, we own all rights, title, interest, copyright and other worldwide rights in the DCGlass Services and all copies of the DCGlass Services. You may submit comments or ideas about the DCGlass Services ("**Feedback**"). By submitting any Feedback, you agree that your disclosure is gratuitous, unsolicited, and without restriction, that it will not place us under any fiduciary, confidentiality or other obligation, and that we are free to use the Feedback and incorporate it into the DCGlass Services or other DCPayments services or products (which we will continue to own all rights to) without any additional compensation to you, and/or to disclose the Feedback on a non-confidential basis or otherwise to anyone.
- 13.7. **Third Party Products.** All third party products included or sold with the DCGlass Services are provided solely according to the warranty (if any)

and other terms specified by the manufacturer, who is solely responsible for service and support for its product.

#### **14. REPRESENTATIONS AND WARRANTIES.**

##### **14.1. Representations of Merchant.** You represent and warrant that:

- (a) All information provided by you in the Merchant Application or provided by you to DCPayments is true and complete, and will remain so during the Term unless you provide written notice of any changes;
- (b) You will immediately notify us if you undergo a change to the nature of your business including selling products or services not related to your current business or if there is a change of ownership of control of the business;
- (c) You have the full authority to enter into and fully perform your obligations under this Agreement;
- (d) You will comply with all Applicable Laws in connection with this Agreement, including but not limited to obtaining appropriate consent from Cardholders to handle their Cardholder Information in accordance with the Agreement and to disclose it to us as required to perform our obligations set out in this Agreement.

**14.2. Warranty Disclaimer.** DCPayments does not make any representations, conditions, or warranties, express or implied, oral or written, with respect to the services, or any equipment (whether purchased equipment or leased equipment) or software used in connection with the services, including but not limited to, warranties of quality, performance, merchantability and fitness for a particular purpose. DCPayments does not warrant that the services or any equipment or software used in connection with the services will meet the merchant's needs or will be uninterrupted or error-free and DCPayments does not make any representations, conditions, or warranties

regarding the timing or timeliness of the services, or regarding the security, integrity or availability of data, services, or systems that we provide, use, process, handle, or make available to you. The parties agree that the United Nations convention on contracts for the international sale of goods will not apply to this agreement.

#### **15. LIMITATIONS OF LIABILITY AND INDEMNITY**

**15.1. No Responsibility.** DCPayments and DCB will not be liable for any default or delay in the performance of our obligations under the Agreement if such default or delay is caused, directly or indirectly, by a Payment Network, a Card Issuer, failure of telecommunications, communications or banking systems, electrical power failures, acts of God, fire, flood, strike, lockout or other labour disturbance, pandemics, governmental acts or orders or restrictions, local or national emergency. We will not be responsible for any Claims or Losses incurred directly or indirectly by you (unless resulting from our gross negligence or willful misconduct) resulting from:

- (a) disputes between you and a Cardholder;
- (b) the receipt, quality, price or satisfaction of goods or services furnished by you;
- (c) any act or omission by you or your personnel arising out of a Transaction;
- (d) any Prohibited Transaction;
- (e) any failure or delay in the performance of any of the Services;
- (f) your use of an Authorized Third Party Provider; and
- (g) unauthorized or fraudulent use of or errors in the use of the Services or Equipment and any resulting unauthorized, fraudulent or erroneous Transactions.

**15.2. Liability for Transactions.** Our liability with respect to any Transaction will not exceed the amount of

the Transaction Receipt in connection with that Transaction less any applicable fees and charges.

- 15.3. **MATCH Reporting.** You waive and will hold DCPayments and DCB harmless from any claims that you may raise as a result of your MATCH file or DCPayments reporting to the MATCH system.
- 15.4. **Limitation of Liability.** DCPayments and DCB will not be liable to you for any indirect, incidental, consequential, special, punitive or exemplary damages. If DCPayments or DCB are found liable to you for any losses or damages arising out of, or relating in any way to, the Agreement or the Services then our liability will be limited to only direct damages in the aggregate to an amount not to exceed the total Fees paid by you under the Agreement during the six (6) months prior to the time the liability arose (excluding any termination payment paid by you in accordance with Section 9.6)

## 16. INDEMNIFICATION

- 16.1. **Indemnity.** You will indemnify us, DCB, and our respective officers, directors, agents, and employees, from any and all Claims and Losses, including third party Claims, arising from or relating to:
- (a) Any breach by you or an Authorized Third Party Provider of any of your obligations, representations or warranties under this Agreement, the Payment Network Rules or Data Security Requirements;
  - (b) Any chargeback or Claim made against us by a Card Issuer or Cardholder that arises from Cardholder fraud of which you were, or ought to have been aware of, at the time of the Transaction, or from any Transaction or Prohibited Transaction; or
  - (c) Any fraud, wilful misconduct, negligence or illegal act or omission by you or your personnel (whether alone or in collusion or cooperation with others).

## 17. MISCELLANEOUS

- 17.1. **Notices.** All notices, approvals, consents and other communications under this Agreement will be given in writing and will validly given if delivered by hand or courier or email. Notices given or served by personal delivery or courier will be deemed to be given or served on the date of delivery. Any notice sent by e-mail transmission will be deemed to have been served at the time of transmission provided that such transmission is made before 4.00 p.m. (MT) on a Business Day and where such transmission is made at any other time it will be deemed to have been sent at 9.00 a.m. (MT) on the next following Business Day. Notice to the Merchant may be given at the address or email listed on the Merchant Application. Notice to DCPayments will be made to:

**Digital Commerce Payments Inc.**

Attention: Legal Department

Address: 736 Meridian Road NE  
Calgary, AB T2A 2N7

Email: [legal@dc-payments.ca](mailto:legal@dc-payments.ca)

- 17.2. **No Conflict.** The authorization, issuance, execution and delivery of this Agreement by you and the performance of your obligations under this Agreement do not:
- (a) conflict with, result in the breach of, or constitute an event which would result in a default under, or accelerate the performance required by, the terms of any agreement, document, contract, instrument or commitment to which you are a party;
  - (b) conflict with, constitute a breach of, or violate your constituting documents, by-laws or any other equivalent organizational documents or resolutions;
  - (c) conflict with or require any consent or approval under any judgment, order, writ, decree, permit or license to which you are a party;
  - (d) require the consent or approval of any other party to any agreement, document,



contract, instrument or commitment to which you are a party; or

- (e) conflict with or constitute a breach of any Applicable Law.

17.3. **Changes to Agreement.** We can amend, restate, supplement or otherwise modify the Agreement at any time by giving you notice. For the purpose of this Section 0, notice may be given in accordance with Section 17.1 or by posting the amended Agreement to our website. Your continued use of the Services after the effective date of any amendment, restatement, supplementation or any other modification to the Agreement constitutes acceptance of any such amendment, restatement, supplementation or other modification. You expressly acknowledge and agree that the Payment Network Rules and the Data Security Requirements may be amended, restated, supplemented or otherwise modified at any time without prior notice to you and you are required to ensure that you remain aware of any such amendments and comply with them.

17.4. **Governing Law.** This Agreement will be interpreted and enforced in accordance with the laws of the Province of Alberta and the federal laws of Canada applicable therein. Each Party irrevocably agrees to submit to the jurisdiction of the courts sitting of such province, which will be the exclusive forums for the purpose of any suit or proceeding arising out of or concerning this Agreement.

17.5. **Waiver.** No terms or provisions of this Agreement will be deemed waived unless such waiver is made in writing and signed by the Party against whom such waiver or consent is sought to be enforced. Any delay, waiver or omission by either Party to exercise any right or power arising from any breach or default of the other Party in any of the terms, provisions or covenants of this Agreement will not be construed to be a waiver by a Party of any subsequent breach or default of the same or

other terms, provisions or covenants on the part of the other Party.

17.6. **Severability.** If any provision of this Agreement is declared or found to be illegal, unenforceable or void, this Agreement will be construed as if not containing that provision and the rest of this Agreement will remain in full force and effect.

17.7. **Language.** This Agreement and all related documentation were drafted in English at the express consent of the parties hereto. Les parties ont demandé que les présents contrats ainsi que les documents s'y rattachant soient rédigés en langue anglaise.

17.8. **Assignment.** You may not assign or transfer the Agreement without our express written consent. DCPayments will be entitled to assign this Agreement at any time to any party without notice to you.

17.9. **Class Action Waiver.** To the fullest extent permitted by Applicable Laws, you agree that no class or collective actions can be asserted against us in respect of the Agreement. All claims must be brought solely by you in your individual capacity and not as plaintiff or class member in any purported class or collective proceeding.

17.10. **Third Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

17.11. **Entire Agreement.** This Agreement constitutes the only agreement between the Parties hereto relating to the subject matter hereof, and supersedes and cancels all prior communications, representations, negotiations, agreements and understandings, whether oral or written, between the Parties.