

DESJARDINS PAYMENT  
SERVICES AGREEMENT



**Desjardins**  
Business



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DESJARDINS PAYMENT SERVICES AGREEMENT BETWEEN: THE FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC (THE "FEDERATION") AND THE MERCHANT AS INDICATED ON ITS DESJARDINS PAYMENT AND FINANCING SOLUTIONS APPLICATION FORM OR ON ANY OTHER DIGITALLY-RECORDED DESJARDINS PAYMENT SERVICES APPLICATION ("THE MERCHANT"), DURING ITS INITIAL ENROLMENT IN ONE OR SEVERAL DESJARDINS PAYMENT SERVICES OR ANY SUBSEQUENT ENROLMENT THEREAFTER.

# 1. ACCEPTANCE OF USER TERMS AND CONDITIONS

WHEN THE MERCHANT FIRST USES OR FIRST ALLOWS THE USE OF EACH OF THE DESJARDINS PAYMENT SERVICES THAT IT HAS APPLIED FOR ON ITS DESJARDINS PAYMENT SERVICES APPLICATION OR ON ANY SUBSEQUENT APPLICATION OR ANY OTHER DIGITALLY-RECORDED DESJARDINS PAYMENT SERVICES APPLICATION, IT AGREES AND UNDERTAKES TO COMPLY WITH EACH AND EVERY TERM AND CONDITION OF USE SET OUT IN THIS AGREEMENT AND GOVERNING EACH OF THE DESJARDINS PAYMENT SERVICES.

The Merchant agrees that it shall not enter into any other agreement with a third party having the same goal or purpose as any of the Desjardins Payment Services governed by this Agreement that the Merchant selected either on its Desjardins payment and financing solutions Application Form or on any subsequent application or any other digitally-recorded application, except as authorized in writing by the Federation.

Any Merchant associated with a banner, association or group that negotiated a specific and binding agreement with the Federation is asked to contact the franchisor, association or head office of the group to which it belongs to obtain a copy of that agreement and examine the terms and conditions thereof.

## 2. DEFINITIONS

In this Agreement and any document ancillary hereto, the following words and expressions shall have the meanings given below unless explicitly stated otherwise.

**2.1 "Additional Credit Card"** means any credit card the Federation may from time to time designate for which the Additional Credit Card Merchant Service is offered and which is, in the case of the Additional Credit Card Merchant Service, a credit card other than a Visa Credit Card or a MasterCard Credit Card;

**2.2 "Additional Credit Card Merchant Service"** means the service whereby the Merchant can provide its customers with an Additional Credit Card payment method to purchase goods or services. This service includes only the operations described in Section 3.9 of this agreement;

**2.3 "Administrative Personal Identification Number (PIN)"** means the administrative access code consisting of the personal identification number provided to the Merchant by the Federation that is used to authorize purchase cancellation and discount/refund Transactions completed using the Terminal;

**2.4 "Agreement"** means this Agreement and the Application Form, as well as any amendments that may be made to them from time to time;

**2.5 "Application Form"** means the Desjardins payment and financing solutions application form filled out by the Merchant when it, without limitation, applies for one or more Desjardins payment and financing services, subsequently adds a service, or applies for one or more Desjardins payment and financing services by means of a digitally-recorded application;

**2.6 "Cardholder"** means, in respect of a Credit Card and a Private Label Credit Card, the person whose name is embossed on the card and whose signature appears on the back and, in respect of a Debit Card, the person who is the holder of the bank account associated with the Debit Card;

**2.7 "Card Organization"** means, (i) Visa Corporation Canada and Visa Inc. in the case of the Visa Merchant Service; (ii) MasterCard Canada Inc. and MasterCard International Inc. in the case of the MasterCard Merchant Service; (iii) the Interac® Association in the case of the Desjardins Direct Payment Service; and (iv) any Additional Credit Card issuer in the case of the Additional Credit Card Merchant Service;

**2.8 "Cellular Terminal"** means a Terminal linked to the Federation by cellular transmission;

**2.9 "Chip Credit Card"** means a Credit Card with an integrated microchip. This chip may contain confidential information such as the Cardholder's account number and, where applicable, their personal identification number (PIN);

**2.10 "Concentrator"** means the telephonic concentrator, telecommunications link, switcher or other telecommunications device not provided by the Federation and that is used by the Merchant, from time to time, to send data to the Federation;

**2.11 "Contactless Credit Card"** means a Credit Card with an integrated circuit chip and an antenna in the body of the card allowing it to communicate with a terminal using radio waves;

- 2.12 “Credit Card”** means (i) a Visa Credit Card in the case of the Visa Merchant Service; (ii) a MasterCard Credit Card in the case of the MasterCard Merchant Service; and (iii) an Additional Credit Card in the case of the Additional Credit Card Merchant Service;
- 2.13 “Control Panel”** means the computer application that enables the Merchant to perform several actions, including viewing and exporting data on Transactions that have been carried out;
- 2.14 “Debit Card”** means any valid and eligible Debit Card for the purposes of the Desjardins Direct Payment Service, as designated by the Federation. The cards eligible for the Desjardins Direct Payment Service are those issued by financial institutions that are members of the Interac network and that have subscribed to the Interac direct payment service. Where the context so requires, a Debit Card includes a Visa Debit Card;
- 2.15 “DePOSiTEL Payment Service”** means a terminal accessible by telephone allowing a Merchant using this service to have Transactions authorized and moneys deposited in its Merchant Account. Such transactions require a voucher printed on an imprinter;
- 2.16 “Deferred Payment Financing”** means the financing method which allows the Cardholder of a Desjardins Visa Card or of a Private Label Credit Card of a Merchant that subscribed to that service to defer the payment of their purchase to a later date under specific payment terms;
- 2.17 “Desjardins Access Key”** means the keys that allow the Merchant to use a Terminal not provided to it by the Federation in order to access the Desjardins Payment Service;
- 2.18 “Desjardins Accord D Financing Service”** means, depending on the context, either the Desjardins Accord D Full-service Financing Service or the Desjardins Accord D À la carte Financing Service;
- 2.19 “Desjardins Accord D À la carte Financing Service”** means the financing service that allows the Merchant’s customers to pay for their purchases with a Visa Credit Card or a Private Label Credit Card in accordance with three financing methods, namely, Deferred Payment Financing, Equal Instalment Financing and Equal Instalment Multiple Purchase Financing. Merchants with this service request the issue of Desjardins Visa Cards when forwarding any financing application on behalf of its customer;
- 2.20 “Desjardins Accord D Full-service Financing Service”** means the financing service that allows the Merchant’s customers to pay for their purchases with a Desjardins Visa Card or a Private Label Credit Card in accordance with three financing methods, namely, Deferred Payment Financing, Equal Instalment Financing and Equal Instalment Multiple Purchase Financing. Merchants with this service request the issue of Desjardins Visa Cards or Private Label Credit Cards, as the case may be, when forwarding any financing application on behalf of its customer;
- 2.21 “Desjardins Data Centre”** means the data centre of the Federation;
- 2.22 “Desjardins Direct Payment Service”** means the service allowing a Merchant to make available to its customers a Debit Card as a form of payment in accordance with the applicable terms and conditions, whether or not this Debit Card was issued by a Desjardins caisse or other issuing financial institution participating in the *Interac*® network;
- 2.23 “Desjardins Gift Card Programs”** means each of the gift card programs to which the Merchant has chosen to subscribe, the terms and conditions of which are set forth in Section 7;
- 2.24 “Desjardins Payment Service”** means each of the Desjardins Payment Services that the Merchant has selected on its Application Form, on any subsequent application or on any other digitally-recorded Desjardins Payment Service application, excluding Third Party Complimentary Services;
- 2.25 “Desjardins Visa Card”** means a Visa Credit Card issued by the Federation;
- 2.26 “Draft/Invoice/Statement”** means, in either case, the document evidencing that the Cardholder purchased goods or services offered by the Merchant using a Credit Card, a Debit Card or a Private Label Credit Card;
- 2.27 “Electronic Capacity”** means a phase in the progress of a Transaction where all the following conditions have occurred: (i) the zero Floor Limit applies (or the Terminal is capable of reading and acting upon the service code in the magnetic stripe or upon the information contained in the chip or in the contactless device); (ii) the authorization response is received online; and (iii) the authorization response and invoicing data are captured electronically;
- 2.28 “Equal Instalment Multiple Purchase Financing”** means the financing method that allows the Cardholder of a Desjardins Visa Card or of a Private Label Credit Card issued by a Merchant that subscribed to that service to make multiple purchases of goods or services throughout a period by deferring payment, the balance of which they may pay upon expiry of the deferral period by spreading out payments into a specific number of instalments and under specific payment terms;

- 2.29 “Equal Instalment Financing”** means the financing method that allows the Cardholder of a Desjardins Visa Card or of a Private Label Credit Card issued by a Merchant to distribute the price of their purchase into a number of equal instalments and under specific payment terms;
- 2.30 “Fee Schedule”** means any fee schedule that may be attached to the Application Form for any of the Desjardins Payment Services, as well as any related document that may be provided to the Merchant at the time of its application, when opening its Merchant account or thereafter;
- 2.31 “Floor Limit”** means, where applicable, the maximum amount that the Federation may authorize in respect of: (i) a Cardholder’s purchases of goods offered or services rendered by the Merchant in a single Credit Card Transaction; or (ii) the total Transactions carried out with a Merchant in one day; without, in both cases, requiring systematic authorization from the Federation;
- 2.32 “Guides and Instructions”** means all guides, instructions, directives, checklists and other communications that may from time to time be sent to the Merchant by the Federation that relate to any of the Desjardins Payment Services. The Guides and Instructions may be issued by the Federation or a Card Organization and deal, without limitation, with the processing of Transactions, the refusal or cancellation of credit related to a Transaction, the prevention and detection of fraudulent Transactions, the installation and use of Terminals and the forms to be used for any of the Desjardins Payment Services;
- 2.33 “Identifier”** means the code provided by the Federation that enables the Merchant to identify itself on the Secure Payment Gateway. This code is issued by the Federation when the Gateway is activated;
- 2.34 “Integrated POS Terminal “or” IPOS”** means a PIN selector keypad used solely with the particular payment solution integrated into the Merchant’s cash register system;
- 2.35 “Intellectual Property Rights”** means any registered or unregistered intellectual property or industrial right protected under a law of Canada, of any foreign country or of any political jurisdiction of a country;
- 2.36 “Magnetic Stripe Credit Card”** means a Credit Card or a Private Label Credit Card equipped with a thin flexible stripe, generally in plastic, one side of which is coated with a magnetic substance that serves as a recording medium for confidential information such as account numbers;
- 2.37 “MasterCard Merchant Service”** means the service whereby the Merchant can provide its customers with a MasterCard Credit Card payment method to purchase goods or services;
- 2.38 “MasterCard Credit Card”** means an unexpired MasterCard® Credit Card showing the MasterCard name or bearing the MasterCard® symbol and/or distinctive intertwined circles;
- 2.39 “Merchant Account”** means the account or accounts, described in Section 8 of this Agreement, held by the Merchant for the purposes of using the Desjardins Payment Services;
- 2.40 “Merchant’s Computer Systems”** means all the computer systems used by the Merchant in its business, including those forming part of the Merchant’s Point of Sale Equipment, for the purposes of storing, processing and transmitting data related to a Transaction or to a Cardholder, excluding any Terminal provided to it by the Federation pursuant to this Agreement;
- 2.41 “Merchant’s Point of Sale Equipment”** means a cash register, a microcomputer, one or more electronic tablets, a smartphone or other device, or any other sales-facilitating tool, Terminal or other equipment not provided by the Federation that is used in connection with a Desjardins Payment Service to carry out Transactions;
- 2.42 “Mobile Application”** means an application the Merchant must download, at its expense, on its smartphone or other device allowing it to access the various tools and services made available to it by the Federation in connection with a Mobile Payment Solution;
- 2.43 “Mobile Keypad”** means a PIN selector keypad used only in connection with a Mobile Payment Solution;
- 2.44 “Mobile Payment Solution”** means a service allowing the Merchant, through its smartphone or other device and a Mobile Keypad, to make available to its customers a mobile method of paying by Credit Card and Debit Card to purchase products or services;
- 2.45 “Participating Merchants”** means, in respect of the Desjardins Gift Card Programs, stores operating under the same banner as, affiliated with or part of the same group as the Merchant that intend to participate in a Desjardins Gift Card Program under the terms and conditions set forth in this Agreement, specifically under Section 7;
- 2.46 “Parties”** means the Federation and the Merchant, and “Party” means one or the other of the “Parties”;
- 2.47 “Password”** means the confidential password issued to the Merchant by the Federation which allows the Merchant to identify itself;

**2.48 "PCI DSS"** (Payment Card Industry Data Security Standard) means the requirements related to the security of data issued from time to time by the PCI Security Standards Council, as well as any amendments that may be made thereto from time to time. Any reference in this Agreement to the PCI DSS regarding any of the Desjardins Payment Services refers to that standard as it is interpreted by the relevant Card Organization or, where applicable, by the Federation;

**2.49 "Place of Business"** means the various places of business where the Merchant wishes to use the Desjardins Payment Services. Upon mutual agreement with the Federation, the Merchant may add or remove Places of Business where it wishes to use the Desjardins Payment Services;

**2.50 "Private Label Credit Card"** means a Credit Card issued and administered by the Federation and bearing a Merchant's logo, allowing the Cardholder to make purchases only at that Merchant's location, to the exclusion of any other Merchant;

**2.51 "Remote Transaction"** means any Transaction made without the Credit Card, the Private Label Credit Card or the Cardholder being present at the Place of Business, in particular in the case of a telephone, mail or online order;

**2.52 "Secure Payment Gateway"** means, depending on the case, a secure online Transaction payment service offered by a designated supplier or the Federation that allows the Federation's Data Centre to present a secure Web page to the Merchant's customer and to receive information on the secure page in addition to allowing the Desjardins Data Centre to authorize Transactions for both the Merchant and its customer, and enabling the moneys arising from the Transaction to be deposited into the Merchant Account;

**2.53 "Terminal"** means a point of sale Terminal, an Integrated POS Terminal and/or a Mobile Keypad, namely one or more items of equipment consisting of, as the case may be, a Magnetic Stripe Credit Card reader, a Chip Credit Card reader, a Contactless Credit Card reader, an automated Terminal, a monitor, a printer, a telephone and/or a PIN selector keypad linked to the Federation as stipulated in this Agreement, which device is required to use one or more Desjardins Payment Services at a Place of Business. This term includes the Merchant's Point of Sale Equipment, the Concentrator and the Payment Server;

**2.54 "Third Party Complementary Service"** means any service supplied by a third party, available using a Terminal, the Merchant's Point of Sale Equipment or a Secure Payment Gateway, that is ancillary or complementary to any of the Desjardins Payment Services, including any service related to a loyalty program. A Third Party Complementary Service is subject to a specific agreement entered into between the third party and the Merchant to the exclusion of the Federation;

**2.55 "Transaction"** means any authorized Transaction between a Merchant and a Cardholder made using a Credit Card, a Debit Card or a Private Label Credit Card. Where the context so requires, a Transaction includes a Remote Transaction;

**2.56 "Transaction Authentication Key"** means the key allowing the Merchant to access the Secure Payment Gateway obtained from a designated supplier, and "Security Key" means the key allowing the Merchant to access the Secure Payment Gateway obtained from the Federation;

**2.57 "Transaction Authorization, Input and Processing Service"** means a system which, through the use of a Terminal for Credit Cards or a telephone device or Secure Payment Gateway for the DePOSITEL Payment Service, enables the Merchant to (i) identify a Cardholder whose name appears on a Credit Card whose file is stored in a computer database; and (ii) make the direct deposit in the Merchant Account;

**2.58 "User Code"** means a code provided by the Federation that enables the Merchant to identify itself;

**2.59 "Virtual Terminal"** means a tool accessible from the Internet allowing the Merchant to process Remote Transactions. This terminal communicates with the Secure Payment Gateway by a secure link that complies with Federation standards;

**2.60 "Visa Credit Card"** means an unexpired Visa® Credit Card displaying the distinctive blue, white and gold colour bands or displaying the distinctive "Winged Visa" dual colour design (the "Visa Brand Mark"), or if the Merchant is a merchant with Electronic Capacity, bearing the Visa Brand Mark with the Electron Identifier;

**2.61 "Visa Debit Card"** means a debit card issued by financial institutions that have subscribed to the Visa Debit service;

**2.62 "Visa Merchant Service"** means the service whereby the Merchant can provide its customers with a Visa Credit Card payment method to purchase goods or services;

**2.63 "Web Application"** means a software application available via a Web browser that the Merchant can use to access various tools made available to it by the Federation and to access services, Statements or account statements;

## 3. VISA MERCHANT SERVICE AND MASTERCARD MERCHANT SERVICE

### 3.1 SCOPE OF THE PROVISIONS RELATING TO THE VISA MERCHANT SERVICE AND MASTERCARD MERCHANT SERVICE

The following provisions prescribe the terms and conditions applicable to the Visa Merchant Service and the MasterCard Merchant Service unless indicated otherwise or the provisions specify one in particular. Moreover, these services are subject to the rules and regulations of the relevant Card Organization, including any amendment that may be made thereto from time to time.

### 3.2 MERCHANT'S OBLIGATIONS

**3.2.1** Upon presentation of a Credit Card or a Private Label Credit Card by the Cardholder, the Merchant agrees as follows:

- A) to sell the goods or provide the services agreed upon to the Cardholder;
- B) not to charge any commission or any other fees for the use of the Credit Card or the Private Label Credit Card as a means of payment;
- C) not to demand, as a condition for accepting the Credit Card or Private Label Credit Card, that the sale of goods or the provision of services be of a minimum or maximum amount;
- D) not to establish any practice related to the acceptance of Credit Cards that favours the use of one Credit Card over another Credit Card of the same brand or of another brand;
- E) unless such information is needed to complete the Credit Card Transaction, not to refuse to carry out a Credit Card Transaction or Private Label Credit Card Transaction solely because the Cardholder refuses to provide additional information regarding his identity; and
- F) not to use an imprinter in the case of a payment made using a Chip Credit Card unless the Merchant is using a Terminal not equipped with a chip card reader or the Merchant is using the DePOSITEL Payment Service.

**3.2.2** The Merchant undertakes, under normal operating conditions, to obtain authorization in accordance with Section 3.8 of this Agreement for each Credit Card Transaction or Private Label Credit Card transaction. Except for a service that does not require the signature of the Cardholder and for Remote Transactions, the Merchant shall complete each transaction by filling out an Invoice provided or approved by the Federation, by printing thereon the information embossed on the Credit Card or the Private Label Credit Card and on the Merchant's printer plate (except for Chip Credit Cards used with Merchants whose Terminals process transactions made using such cards), or by using an electronically printed Draft, without attempting to allocate the amount of any Transaction over more than one Invoice or Draft. If the transaction is made using a Magnetic Stripe Credit Card, the Invoice or Draft, as the case may be, must be signed by the Cardholder, to whom the Merchant shall give a copy thereof.

**3.2.3** The Merchant must archive its Drafts and Invoices, its credit notes as well as any other document relating to the Transactions (in this paragraph, collectively the "Drafts and/or Invoices") for a period of three (3) years (in this paragraph, the "Retention Period"). During this Retention Period, the Federation may, at any time, request the return of the Drafts or Invoices. Where the Merchant cannot produce a Draft or an Invoice for any reason, it shall assume any damages that might arise from the loss of such Draft or Invoice, and it expressly authorizes the Federation to debit its Merchant Account accordingly, where applicable. The Merchant shall have five (5) business days to send the Drafts or Invoices following the date of receipt of a notice to that effect sent by the Federation in accordance with Section 24.1 of this Agreement. The original Drafts and/or Invoices and a clearly legible copy must be sent to the Federation. Until the Retention Period expires, the Merchant shall be responsible for any material containing Credit Card or Private Label Credit Card account numbers and all copies related thereto and shall keep such material in a reserved location accessible only to designated members of its personnel.

**3.2.4** The Merchant undertakes to comply at all times with the Guides and Instructions that apply to the handling of transactions and any other related obligation.

**3.2.5** With respect to each Transaction, the Merchant represents and warrants that it represents a bona fide sale of products or services in the normal course of its business, that complies in all respects with this Agreement and with the law, and that it is unaware and has no knowledge of any circumstance that might adversely affect the enforceability of any recovery against the Cardholder.



**3.2.6** The Merchant agrees to take all necessary measures, including with respect to the appropriate location of the PIN selector keypad, to ensure the confidentiality of the Cardholder's personal identification number (in this paragraph, the "PIN") while such PIN is being entered during a Credit Card transaction, where applicable. Moreover, the Merchant agrees not to ask a Credit Card Cardholder to reveal their PIN or otherwise attempt to obtain such PIN.

**3.2.7** The Merchant undertakes to give the Federation thirty (30) days' prior written notice of any change in its name, address (street number or electronic address), vocation or the products that it sells.

### **3.3 REMOTE TRANSACTIONS**

**3.3.1** The Merchant recognizes that in carrying out Remote Transactions, IT DOES SO AT ITS OWN RISK AND PERIL AND WITHOUT ANY GUARANTEE BY THE FEDERATION in respect of the validity of said Transactions.

**3.3.2** In addition to the other rights set forth in Section 3.4 of this Agreement, the Federation may, at its sole discretion, refuse to honour a Remote Transaction concluded with the Merchant, even if it has already been authorized, including any Remote Transaction relating to an Invoice contested by a Cardholder.

**3.3.3** Following a refusal to honour an Invoice for a Remote Transaction, the Federation may, without any prior authorization from the Merchant, refuse to credit the Merchant Account for the total amount of said Invoice, may cancel a related credit, or may directly debit an equivalent amount from the Merchant Account.

**3.3.4** If the Merchant offers goods or services on its website, it agrees to display all the following information: (i) a full description of the goods and services offered, (ii) the return or refund policy, (iii) the customer service contact, including email address or telephone number, (iv) the transaction currency, (v) the export restrictions (if known), (vi) the delivery policy, (vii) the country where the Merchant resides, (viii) the customer data privacy policy, (ix) the security capabilities and policy for transmission of payment card information, (x) the Visa Brand Mark and, where applicable, the Visa Brand Mark with the Electron Identifier in full colour and the MasterCard symbol and/or the distinctive intertwined circles to indicate that the Credit Card is accepted, and (xi) the Merchant's physical address (other than a post office box or a mail forwarding service) for purposes of correspondence or legal proceedings or, where the Merchant only sells digital goods, the physical address where one of the owners resides.

### **3.4 REFUSAL OR CANCELLATION OF CREDIT**

**3.4.1** Notwithstanding any Credit Card Transaction or Private Label Credit Card Transaction authorization that may be given by or on behalf of the issuer of a Credit Card or Private Label Credit Card, and notwithstanding the conditions pertaining to the settlement of a dispute between the Merchant and the Federation, the Federation may refuse to credit the Merchant Account for the total amount of any Invoice or may cancel a credit related thereto and, where applicable, debit the Merchant Account for any Transaction for up to three (3) years following the Transaction date in any of the following circumstances:

- A)** the Merchant has not complied with the terms and conditions of this Agreement;
- B)** the Merchant has neither completed nor obtained the information required (date, amount, authorization number, signature of the Cardholder) on the Invoice prepared using the imprinter where the Terminal could not electronically read the Cardholder's Magnetic Stripe Credit Card, Chip Credit Card or Contactless Credit Card;
- C)** the Merchant is unable to prove that a Credit Card or a Private Label Credit Card was submitted to it at the time of the Transaction either by the imprinting thereof on the Invoice or by the electronic reading of the Credit Card or the Private Label Credit Card by the Terminal;
- D)** the Credit Card or the Private Label Credit Card number appearing in whole or in part on the Statement differs from the number appearing on the Cardholder's Credit Card or Private Label Credit Card;
- E)** in the case of a Transaction made using a Magnetic Stripe Credit Card, the Cardholder's signature is missing from the Invoice;
- F)** in the case of a Transaction made using a Magnetic Stripe Credit Card, the signature appearing on the Invoice is forged or unauthorized, or the Cardholder claims it is forged or unauthorized, provided it cannot be deemed to be reasonably similar to the one appearing on the Credit Card or the Private Label Credit Card;

- G)** the goods referred to on the Invoice (i) were returned to the Merchant or were not received, or (ii) according to the Cardholder, were allegedly returned to the Merchant, allegedly not received or allegedly returned to the Merchant but refused by it;
- H)** the Cardholder has stated that they are not satisfied with the services set out on the Invoice;
- I)** the amount of the Invoice exceeds the Floor Limit and was not pre-approved by or on behalf of the Federation;
- J)** the Invoice is illegible;
- K)** the Invoice pertains to a Credit Card or a Private Label Credit Card that was cancelled or that should not be accepted after notice was given by the Federation to the Merchant to this effect;
- L)** the Credit Card Transaction or Private Label Credit Card Transaction evidenced by the Invoice or any credit related thereto includes a cash advance granted by the Merchant to the Cardholder;
- M)** it can be proven that the Merchant tried to reduce or hide the amount of a Credit Card Transaction or Private Label Credit Card Transaction by spreading it out over more than one Invoice (split ticketing);
- N)** a copy of the same Invoice has already been submitted by the Merchant, or the Credit Card Transaction or Private Label Credit Card Transaction was entered more than once in the Terminal, or the Federation has already credited the Merchant Account for the amount of the Transaction or of the same Invoice;
- O)** the Merchant entered or attempted to enter in the Terminal fictitious Credit Card Transactions or Private Label Credit Card Transactions or any Credit Card Transactions or Private Label Credit Card Transactions deemed irregular, or it submitted or attempted to submit Invoices for fictitious Credit Card Transactions or Private Label Credit Card Transactions or otherwise defrauded or attempted to defraud the Federation;
- P)** the Credit Card Transaction is non-compliant, is unacceptable or the subject of a chargeback according to the relevant Card Organization's rules and regulations;
- Q)** a request for authorization regarding a Credit Card or Private Label Credit Card used in a transaction was refused;
- R)** the Credit Card Transaction or Private Label Credit Card Transaction evidenced by the Invoice took place before the effective date embossed on the Credit Card, where applicable;
- S)** the Merchant accepted a Credit Card or Private Label Credit Card, or submitted any document to the Federation for processing purposes, including Invoices or credit vouchers, pertaining to goods or services that were sold or rendered (or allegedly sold or rendered) by parties other than the Merchant;
- T)** the Merchant accepted Invoices before its Merchant Account was opened or after it was closed;
- U)** the refusal or cancellation of credit related to a Credit Card Transaction or Private Label Credit Card Transaction is covered by the Guides and Instructions;
- V)** the Merchant failed to use a Terminal to effect a Credit Card Transaction or Private Label Credit Card Transaction that cannot be accepted by taking a manual imprint;

**3.4.2** The Federation shall provide the Merchant with details on any Invoice that is refused or debited from its Merchant Account.

**3.4.3** In the event of a dispute regarding a refusal or cancellation under this Clause, the Merchant must send a written notice setting out its reasons for contesting the refusal or cancellation within thirty (30) days of the refusal or cancellation date, failing which the Merchant releases the Federation from any liability related to or arising from such refusal or cancellation.

### **3.5 CLAIM OR DISPUTE REGARDING AN INVOICE**

**3.5.1** Any claim or dispute by a Cardholder regarding a Credit Card Transaction or Private Label Credit Card Transaction evidenced by an Invoice must be settled directly by the Merchant and the Cardholder as set out in Section 12.4 of this Agreement. However, if any refund/discount or adjustment is payable to the Cardholder by the Merchant, it must be made by way of a credit voucher issued to the Cardholder by the Merchant for the Credit Card Transaction or Private Label Credit Card Transaction.

**3.5.2** Section 3.5.1 survives the termination of this Agreement regardless of the reason for such termination.

### 3.6 RECOVERY OF CREDIT CARDS OR PRIVATE LABEL CREDIT CARDS

**3.6.1** The Merchant agrees to cooperate with the Federation in recovering any Credit Cards or Private Label Credit Cards when asked to do so.

### 3.7 RESTRICTION

**3.7.1** Except for Invoice amounts of Credit Card Transactions that the Federation refused to credit to the Merchant Account or in respect of which it has cancelled a credit or otherwise debited the Merchant Account, the Merchant is not entitled to receive payments for Credit Card Transactions evidenced by Invoices from any other source than the Federation.

### 3.8 TRANSACTION AUTHORIZATION, INPUT AND PROCESSING SERVICE

#### 3.8.1 Merchant's Obligations

The Merchant undertakes to:

- A)** verify the validity of the Credit Card or Private Label Credit Card and to obtain authorization in accordance with this Section to complete any of the transactions described below, using the Transaction Authorization, Input and Processing Service, and agrees to communicate by telephone with the Federation's Authorization Centre regarding any Credit Card that is submitted to it before its effective date or after its expiry date, as the case may be. Section 3.8 governs Transactions that are made using a Magnetic Stripe Credit Card, a Chip Credit Card or a Contactless Credit Card and processed by the Merchant using a Terminal equipped with a reader;
- B)** use the Transaction Authorization, Input and Processing Service during hours that are to be pre-determined. The Merchant shall be responsible for making the necessary arrangements with the Federation to ensure that the hours of Service availability it selected reflect its business needs;
- C)** where the Transaction Authorization, Input and Processing Service is unavailable for a period of time during the day (due to a problem with the line or system), (i) for every Transaction, obtain an authorization number from the Federation, (ii) capture the relevant Credit Card Transactions or Private Label Credit Card Transactions in batch entry mode using a Terminal, and (iii) close the batch so that these Transactions are deposited in its Merchant Account. Moreover, the Merchant shall take a manual imprint of the Credit Card or Private Label Credit Card, enter the authorization number it obtained along with the date and the amount of the Transaction, and ensure that it obtains the Cardholder's signature;
- D)** not go to its financial institution to deposit the Invoices or Drafts relating to Credit Card Transactions or Private Label Credit Card Transactions in order to receive the equivalent credit in its account;
- E)** refrain from using or disclosing information pertaining to the Cardholder stored on the magnetic stripe or chip of a Credit Card or Private Label Credit Card.

### 3.9 ADDITIONAL CREDIT CARD MERCHANT SERVICE

#### 3.9.1 Federation's Obligations

- A)** The Federation agrees to provide the Merchant with the Additional Credit Card Merchant Service for each Additional Credit Card transaction in accordance with the terms and conditions set forth in Section 3.9.

#### 3.9.2 Included Operations

- A)** The Additional Credit Card Merchant Service includes only the following operations:
  - (i) capturing Additional Credit Card transactions; and
  - (ii) transmitting information pertaining to such transactions to the relevant Card Organizations, networks or financial institutions (the "Recipients").

The Additional Credit Card Merchant Service excludes any other operation with respect to Additional Credit Card transactions, including the authorization, processing and settlement of such transactions which are performed by the Recipients or third parties acting on their behalf.

### 3.9.3 Merchant's Obligations

The Merchant undertakes to:

- A) confirm the validity of the Credit Card at the time of any Additional Credit Card Transaction;
- B) regarding operations excluded from the Additional Credit Card Merchant Service, maintain the necessary contractual relationships with Recipients and/or third parties acting on their behalf in order to be able to benefit from the said service;
- C) refrain from using or disclosing information stored on the magnetic stripe or chip of an Additional Credit Card of a Cardholder.

## 4. DESJARDINS ACCORD D FINANCING SERVICE

### 4.1 ELIGIBILITY

To be entitled to the Desjardins Accord D Financing Service, the Merchant must not be an "itinerant merchant" within the meaning of the term in the *Consumer Protection Act* (Quebec) (R.S.Q. Chapter P-40.1) or other legislation applicable outside Quebec defining the concept of "itinerant merchant" or any similar concept. The Federation reserves the right to terminate this Agreement in whole or in part if the Merchant benefiting from the Desjardins Accord D Financing Service fails to meet this eligibility criterion.

### 4.2 PROCEDURES

The Merchant undertakes to follow the procedures pertaining to the three financing methods offered as part of the Desjardins Accord D Financing Service, namely Deferred Payment Financing, Equal Instalment Financing and Multiple Purchase Equal Instalment Financing. The Merchant acknowledges having received initial training in respect thereof and having received all required documentation describing the appropriate procedures to be followed.

### 4.3 MERCHANT'S OBLIGATIONS

**4.3.1** The Merchant that uses this service shall send to the Federation, for each of its customers, an application for a Desjardins Visa Card or a Private Label Credit Card, as the case may be, when sending in their financing application.

#### 4.3.2 Processing Invoices

A) Unless specifically indicated otherwise in the Guides and Instructions, the Merchant that uses the Desjardins Accord D Full-service Financing Service and sends its customers' financing applications by fax undertakes to submit to the Federation a copy of the financing and Desjardins Visa Card or Private Label Credit Card application form, as well as the point of sale transaction slip, duly signed by the Cardholder and the Merchant immediately on the Credit Card Transaction date. The Merchant undertakes to archive the original applications for financing and a Desjardins Visa Card or Private Label Credit Card along with the slips for a period of seven (7) years (in this paragraph, the "Retention Period"). During this Retention Period, the Federation may at any time request them. If for any reason the Merchant cannot produce an application for financing and a Desjardins Visa Card or Private Label Credit Card, or a slip, it shall assume any damages that might arise from the said loss, and it expressly authorizes the Federation to debit its Merchant Account accordingly, where applicable. Following transmission of a notice to that effect by the Federation pursuant to Section 24.1 of this Agreement, the Merchant shall have five (5) business days to send the original and a clearly legible copy of the applications for financing and a Desjardins Visa Card or Private Label Credit Card to the Federation at the address designated in its Application Form. Until the Retention Period expires, the Merchant shall be responsible for any applications for financing and a Desjardins Visa Card or Private Label Credit Card as well as all slips, and shall keep such material in a reserved location accessible only to designated members of its personnel.

B) Unless specifically indicated otherwise in the Guides and Instructions, the Merchant that uses the Desjardins Accord D Full-service Financing Service and sends its customers' financing applications through a Web Application undertakes to archive

the applications for financing and a Desjardins Visa Card or Private Label Credit Card as well as the slips for a period of seven (7) years (in this paragraph, the "Retention Period"). During this Retention Period, the Federation may at any time request them. If for any reason the Merchant cannot produce an application for financing and a Desjardins Visa Card or a Private Label Credit Card, or a slip, it shall assume any damages that might arise from the said loss, and it expressly authorizes the Federation to debit its Merchant Account accordingly, where applicable. Following transmission of a notice to that effect by the Federation pursuant to Section 24.1 of this Agreement, the Merchant shall have five (5) business days to send the original and a clearly legible copy of the applications for financing and a Desjardins Visa Card or Private Label Credit Card to the Federation at the address designated in its Application Form. Until the Retention Period expires, the Merchant shall be responsible for any applications for financing and a Desjardins Visa Card or Private Label Credit Card as well as all slips, and shall keep such material in a reserved location accessible only to designated members of its personnel.

**4.3.3** Responsibility: A Merchant that sends its customers' financing applications shall assume full responsibility for delivering the original of any Invoices requested by the Federation. Accordingly, if the Federation does not receive said Invoices, the Merchant agrees to compensate the Federation for any losses it may incur.

**4.3.4** Proof of delivery: The Merchant shall provide proof of delivery for the goods that appear on all Invoices, at the Federation's request.

**4.3.5** The Merchant undertakes to give the Federation thirty (30) days' prior written notice of any change in its name, address (street number or electronic address), vocation or the products that it sells.

#### **4.4 OVERBILLING OF MERCHANDISE**

Upon presentation of a Desjardins Visa Card or of a Private Label Credit Card by the Cardholder or following an Application for financing and issuance of a Desjardins Visa Card or a Private Label Credit Card, the Merchant undertakes:

**4.4.1** to sell goods or render services to the Cardholder at prices not exceeding the prices marked or advertised by the Merchant for such goods or services;

**4.4.2** to sell goods or render services agreed upon to the Cardholder;

**4.4.3** not to claim commissions or other charges for the use of the Desjardins Accord D Financing Service.

#### **4.5 VALIDITY OF INFORMATION**

Where the Merchant uses the Desjardins Accord D Full-service Financing Service, the following stipulations apply:

**4.5.1** Notwithstanding any provision to the contrary in this Agreement, the Merchant shall act as the Federation's agent to the extent required by law, including the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, for the purposes of verifying the identity of the Merchant's customers who are not Cardholders of Desjardins Visa Cards or Private Label Credit Cards, as well as for any other purpose provided for by law. The Merchant's obligations as the Federation's agent pursuant to Section 4.5.1 are more fully detailed in the Guides and Instructions, including with respect to the identification documents to be examined or verified and information to be sent to the Federation.

**4.5.2** The Merchant is responsible for complying with the customer identification procedure and for the accuracy of the information collected in accordance with Section 4.5.1 above, and for the accuracy of any other information provided by the customer on the application for financing under the Desjardins Accord D Financing Service, including, where applicable, for the issuance of a Desjardins Visa Card or a Private Label Credit Card. In this regard, the Merchant shall be liable for any damage incurred by the Federation in connection with the information it provides.

#### **4.6 APPROVAL BY THE FEDERATION**

The Merchant undertakes to obtain the Federation's written approval before making any use of content protected by Intellectual Property Rights belonging to a Card Organization or the Federation, such as the Accord D logo, the Desjardins logo or a text prepared by the Federation. The Merchant undertakes to comply with any directive given to it by the Federation regarding the use of such content and to cease any such use on written request from the Federation.

**4.6.1** If the Merchant chooses to disclose the credit terms offered under the Desjardins Accord D Financing Service in one of its advertisements or promotions (in this paragraph, the “Advertising”), the Merchant undertakes to ask the Federation to provide the legal notes (in this paragraph, the “Notes”) that are to be included in that respect. The Merchant undertakes to use the Federation’s Notes as instructed and, where applicable, to immediately cease using the Notes at the Federation’s written request. The Merchant understands and agrees that the sole purpose of the Federation’s Notes is to include the mandatory particulars regarding disclosure of the applicable terms and conditions of credit for the Desjardins Accord D Financing Service that are prescribed in Section 85 of the *Regulation respecting the Application of the Consumer Protection Act* (R.R.Q., 1981, c. P-40.1, r.3, s. 85) or, in the event of any regulatory or legislative amendment, in any equivalent provision, where applicable. The Federation may also, at its entire discretion, provide the Merchant with Notes of a broader scope. The Merchant understands and agrees that sending the Notes to the Merchant does not mean that the Federation approves the legality of the contents of the Advertising, which shall remain the entire responsibility of the Merchant. The Merchant alone shall be responsible for the legality of the contents of Advertising associated with its products and services. The Merchant understands and agrees that under this Agreement, the Federation does not offer the Merchant legal advice regarding the legality of the Advertising.

**4.6.2** The Merchant shall ask the Federation for the written approvals required under this Section within a reasonable timeframe that allows the Federation to provide the Notes and the Merchant to include the said Notes in the Advertising before the dissemination thereof.

**4.6.3** For the purposes of determining whether a regulatory or legislative amendment has occurred that may have an impact on the referral made in this Section to Section 85 of the *Regulation regarding the Application of the Consumer Protection Act*, the parties agree to use 2011 as the reference year.

#### **4.7 MERCHANT’S WEBSITE**

If the Merchant chooses to offer its customers the Desjardins Accord D Financing Service through its website, the following provisions shall apply:

**4.7.1** The Merchant agrees to comply with the *Consumer Protection Act* (Quebec) (RLRQ, c. P-40.1), and in particular its provisions respecting distance contracts, as well as any other similar law applicable outside Quebec defining the notion of “distance contract” or any similar notion;

**4.7.2** The Merchant acknowledges that any Transaction for orders made over the Internet, even if the said Transaction has been authorized, constitutes a Remote Transaction for the purposes of this Agreement. Therefore, the provisions of Section 3.3 shall apply to all such orders.

**4.7.3** The Merchant agrees to obtain a Secure Payment Gateway in accordance with Section 5 of this Agreement;

**4.7.4** The Merchant agrees to notify the Federation in writing thirty (30) days before making any changes to its website relating to the Desjardins Accord D Financing Service and, where applicable, it shall submit to the certification process required by the Federation. The Federation reserves the right, after notifying the Merchant, to verify that the Merchant’s operations comply with the Federation’s standards and specifications. The Merchant also agrees to notify the Federation within the same timeframe if it changes its name or email address, or changes its purpose or the products or services it sells.

## **5. ONLINE PAYMENT SERVICE AND MOBILE PAYMENT SOLUTION**

### **5.1 ONLINE PAYMENT – MERCHANT’S CHOICE**

**5.1.1** If the merchant wishes to offer its customers online payment services, the merchant must obtain a Secure Payment Gateway from either a designated supplier or the Federation. The terms and conditions for the Secure Payment Gateway obtained from a designated supplier are provided in section 5.2 and the terms and conditions for the Secure Payment Gateway obtained from the Federation are provided in section 5.3.

## **5.2. SECURE PAYMENT GATEWAY OBTAINED FROM A DESIGNATED SUPPLIER**

**5.2.1** If the Merchant wishes to obtain a Secure Payment Gateway from a designated supplier, the Merchant shall reach an agreement with the supplier.

### **5.2.2 Merchant's Obligations**

**5.2.2.1** The Merchant acknowledges that compliance with its confidentiality and information security obligations provided in Section 13 of this Agreement is an essential condition, and it therefore agrees to ensure that Transactions completed through its website or Computer Systems and sent via a Secure Payment Gateway are secured and processed accurately and confidentially for its customers.

**5.2.2.2** The Merchant acknowledges that any Transaction resulting from orders placed over the Internet using a Secure Payment Gateway, even if the said Transaction has been authorized, constitutes a Remote Transaction for the purposes of this Agreement. Therefore, the provisions of Section 3.3 shall apply to any such Transaction.

**5.2.2.3** The Merchant shall be responsible for the authenticity of information transmissions received, and must take appropriate action to ensure that the total amounts of Credit Card Transactions or Private Label Credit Card Transactions are transmitted accurately.

**5.2.2.4** The Merchant acknowledges that the Federation may have access, either directly or through its authorized representatives or external auditors, to the Merchant's electronic files to verify the Credit Card Transactions or the Private Label Credit Card Transactions that it has carried out.

**5.2.2.5** The Merchant agrees to take the necessary measures so that it can provide its customers with a Statement upon receipt of the authorization response.

**5.2.2.6** Notwithstanding Section 20, the Federation reserves the right to terminate this Agreement, at its sole discretion, if it finds a substantial number of chargebacks related to the Transactions made through the Merchant's website, if the Merchant engages in illegal activities, or if the Merchant changes its purpose or the products or services that it sells without informing the Federation in accordance with Section 3.2.7 hereof.

**5.2.2.7** If the Credit Card Transaction or Private Label Credit Card Transaction data are captured by the Merchant's Computer Systems, the Merchant undertakes to comply with the security rules established and communicated by the Secure Payment Gateway supplier regarding the use of the Transaction Authentication Key, as well as with PCI DSS.

## **5.3 SECURE PAYMENT GATEWAY OBTAINED FROM THE FEDERATION**

### **5.3.1 Definitions**

**5.3.1.1** In Section 5.3 herein, the term "Payment" has the same meaning as the term "Transaction" as defined in Section 2.55 of the Agreement, and the expression "Remote Payment" has the same meaning as the expression "Remote Transaction" as defined in Section 2.56, while adapting them as necessary.

### **5.3.2 Federation's Obligations**

**5.3.2.1** If the Merchant wishes to obtain a Secure Payment Gateway from the Federation, the Federation shall give the Merchant access to a Secure Payment Gateway that enables customers to pay for their purchases in a secure manner and enables the said purchases to be credited to the Merchant Account.

**5.3.2.2** The Federation agrees that any Credit Card Payments completed through the Secure Payment Gateway are secured and processed accurately and confidentially for the Merchant and its customers.

**5.3.2.3** The Secure Payment Gateway shall enable the Merchant to receive online Payments using the following credit cards: Visa, MasterCard, American Express or any other card accepted by the Secure Payment Gateway and that the Federation permits the Merchant to accept (in Section 5, an "Authorized Credit Card").

**5.3.2.4** The Federation shall provide the Merchant with appropriate reports on Credit Card Payments completed the previous day using the Secure Payment Gateway. These reports will be available through a report extraction function within the Control Panel.

**5.3.2.5** The Federation will provide the Merchant with a secure Internet address, Identifier and Password, allowing it to carry out transactions on the Control Panel and manage its online credit operations.

**5.3.2.6** The Federation shall also provide the Merchant with software, instructions and specifications enabling it to link its online store and the Secure Payment Gateway.

**5.3.2.7** The Federation shall provide the Merchant, as a Guide and Instruction, a Control Panel user guide and the telephone and email support required to manage problems arising from the use of the Secure Payment Gateway. The Federation shall also help the Merchant solve any technical problems under its responsibility.

### **5.3.3 Merchant's Obligations**

**5.3.3.1** The Merchant acknowledges that compliance with its confidentiality and information security obligations provided in Section 13 of this Agreement is an essential condition to its access to the Secure Payment Gateway and therefore agrees that the Payments completed through its website or Computer Systems and sent via the Secure Payment Gateway are secured and processed accurately and confidentially for its customers.

**5.3.3.2** The Merchant acknowledges that any Payments resulting from orders placed online using the Secure Payment Gateway, through either the Control Panel, a data entry field on the Merchant's website, the Merchant's Computer Systems or its Virtual Terminal, even if such Payment has been authorized, constitutes a Remote Payment for the purposes of this Agreement. Therefore, the provisions of Section 3.3 hereof shall apply to all such online orders. If, in the event of a breakdown of the Secure Payment Gateway, or in any other circumstances, the Merchant uses its Control Panel or Virtual Terminal to carry out Payments for its customers, it does so at its own risk.

**5.3.3.3** The Merchant undertakes to ensure the confidential nature of all information received when using the Secure Payment Gateway and, in particular, all information of a technical nature that may have been provided to it by the Federation, including the websites provided to it during training, and not to disclose to any third party its merchant number, or the names and account numbers appearing on an Authorized Credit Card or on any report or form showing these names or numbers.

**5.3.3.4** The Merchant undertakes to use and not disclose the Identifier and Password assigned to it, and is solely responsible for all Credit Card Payments carried out using such Identifier and Password, as well as those carried out using an Identifier and Password assigned to a user, on its Control Panel or Virtual Terminal, particularly in cases of erroneous, false or fraudulent entries made by it or its employees or agents, or due to its negligence.

**5.3.3.5** The Merchant is responsible for the authenticity of information transmissions received, and must take appropriate action to ensure that the total amounts of Credit Card Payments displayed to its customers by its online store are transmitted accurately to the Secure Payment Gateway.

**5.3.3.6** The Merchant is also responsible for creating a functional link making it possible to transfer information accurately between its online store and the Secure Payment Gateway using the software, information and specifications provided to it by the Federation.

**5.3.3.7** The Merchant shall inform the Federation of any problem that may occur during use of the Secure Payment Gateway with the telephone numbers provided to it by the Federation.

**5.3.3.8** The Merchant acknowledges that the Federation may have access, either directly or through its authorized representatives or external auditors, to the Merchant's electronic files to verify the Credit Card Payments that it has carried out. This verification may be conducted remotely or at any place where the Merchant carries out Credit Card Payments from its Control Panel or its Virtual Terminal.

**5.3.3.9** The Merchant agrees to take the necessary measures so that it can provide its customers with a Statement in the appropriate form upon receiving a response from the Secure Payment Gateway.



**5.3.3.10** The Merchant agrees to notify the Federation in writing at least thirty (30) days before making any changes to its website and, where applicable, it shall submit to the certification process required by the Federation. The Federation reserves the right, after notifying to the Merchant, to verify that the Merchant's operations comply with the Federation's standards and specifications. The Merchant also agrees to notify the Federation within the same timeframe if it changes its name, email address, the purpose of the site or the products it sells.

**5.3.3.11** The Federation reserves the right to terminate the Desjardins Payment Service and revoke the Merchant's access to the Secure Payment Gateway if, at its sole discretion, it finds a discrepancy between the quality of the goods advertised on the website and those delivered to the customer, or that the Merchant sells goods or engages in activities that are illegal.

**5.3.3.12** If the Credit Card Payment data is captured by the Merchant's Computer Systems, the Merchant undertakes to comply with the security rules established and communicated by the Federation through the Guides and Instructions regarding the use of the Security Key, and with PCI DSS.

## **5.4 MOBILE PAYMENT SOLUTION**

### **5.4.1 Federation's Obligations**

**5.4.1.1** The Mobile Payment Solution will enable the Merchant to use the Mobile Keypad to carry out Transactions with Visa Credit Cards, MasterCard Credit Cards and any other Credit Cards or Debit Cards that the Federation allows the Merchant to accept as part of the Mobile Payment Solution.

**5.4.1.2** The Federation will provide the Merchant with appropriate reports recording the Transactions made the previous day using the Mobile Payment Solution. These reports will be available through a report extraction function on the Control Panel.

**5.4.1.3** The Federation will provide the Merchant with an Identifier and a Password that it can use to make credit Transactions on its Control Panel allowed by the Federation, including Transactions which may be indicated in the Guides and Instructions.

**5.4.1.4** The Federation will provide the Merchant with the software, instructions and specifications allowing it to connect its smartphone or other device, the Mobile Application and the Mobile Keypad.

**5.4.1.5** The Federation will provide the Merchant with Guides and Instructions for using the Control Panel and the telephone and email support necessary to manage problems resulting from use of the Mobile Payment Solution. The Federation will also assist the Merchant in resolving any related technical problems.

### **5.4.2 Merchant's Obligations**

**5.4.2.1** The Merchant shall, at its expense:

- (i) provide and keep the smartphone or other device necessary to use the Mobile Payment Solution;
- (ii) ensure that its smartphone or other device contains enough memory and data to operate the Mobile Payment Solution;
- (iii) download the Mobile Application and update it as soon as updates are available.

**5.4.2.2** The Merchant undertakes to use and not disclose the Identifier and Password assigned to it, and will be solely responsible for all Transactions carried out using such Identifier and Password, as well as those carried out using such Identifier and Password on its Control Panel, particularly in cases of erroneous, false or fraudulent use made by it or its employees or agents, or due to its negligence.

**5.4.2.3** The Merchant undertakes to take the necessary measures so that it can provide its customers with a Statement in the appropriate form.

**5.4.2.4** The Merchant acknowledges that the Mobile Application is the exclusive property of the Federation or its suppliers and undertakes to take all necessary steps to keep it confidential and not to modify, translate, adapt, decompile, distribute, sub-licences or reproduce the Mobile Application, and to use it only in connection with the Mobile Payment Solution. If the Merchant breaches these restrictions, it may be sued for damages.

**5.4.2.5** The Merchant undertakes to comply with the terms of use applicable to the Mobile Application.

**5.4.2.6** The Merchant acknowledges that any problem resulting from or related to its smartphone or other device will only involve the Merchant, the supplier of its smartphone or other device and any other supplier involved in the proper operation of the smartphone or other device, and will not involve the Federation in any manner.

**5.4.2.7** The Merchant agrees to take all necessary precautions to keep its smartphone or other device safe and the Mobile Keypad secure in order to avoid any loss, theft or unauthorized use.

## 6. DESJARDINS DIRECT PAYMENT SERVICE

### 6.1 SCOPE OF SERVICE

**6.1.1** The Federation agrees to provide its Desjardins Direct Payment Service to the Merchant at designated Places of Business. This service allows the Cardholder of a Debit Card to authorize the electronic transfer of funds between the account held by the Cardholder and the Merchant Account as payment for Transactions made with the Merchant.

**6.1.2** The Parties agree that the Federation may from time to time modify the types of Debit Card transactions allowed by the Desjardins Direct Payment Service by giving notice to this effect to the Merchant. Such notice must stipulate any additional charges, terms and/or conditions then applicable to new transactions. As of the date of this Agreement, the Desjardins Direct Payment Service offers the following transactions:

- purchase
- purchase with withdrawal
- purchase with gratuity
- purchase refund/discount
- Transaction cancellation/correction
- information on available balance

The Merchant may, on request, have access to other Transactions in addition to those selected upon subscribing to the Desjardins Payment Services. Certain additional charges, terms and/or conditions may then apply.

### 6.2 FEDERATION'S OBLIGATIONS

**6.2.1** In the event the Merchant disputes a Transaction carried out through the Desjardins Direct Payment Service, the Federation undertakes to respond within a commercially reasonable time and to take all useful action to settle the said dispute, provided the Merchant submits its dispute in accordance with the standards and time limits prescribed in Section 6.4.3.

**6.2.2** At no time shall the Federation be required to disclose any information about the Cardholder of a Debit Card.

### 6.3 MERCHANT'S OBLIGATIONS

**6.3.1** The Merchant undertakes to:

- A)** accept Debit Cards for the Desjardins Direct Payment Service in accordance with the terms of this Agreement and the terms and conditions established and revised from time to time by the Federation;
- B)** upon presentation of Debit Cards for the Desjardins Direct Payment Service:
  - (i) sell the goods or provide the services agreed upon to the Cardholder;
  - (ii) not to claim commissions or other charges from the Cardholder to use a Debit Card as a means of payment; and
  - (iii) not to require, as a condition for acceptance of the Debit Card, a minimum or maximum amount for the sale of goods or the provision of services.
- C)** upon completion of a Debit Card Transaction via the Terminal, provide each customer with a Statement evidencing the Transaction;

- D) take all necessary measures, including precautions as to the location of the PIN selector keypad, to ensure the confidentiality of the Cardholder's personal identification number (PIN) while such PIN is being entered during a Debit Card Transaction;
- E) not ask for the PIN of a Cardholder's Debit Card or otherwise attempt to obtain a Cardholder's PIN;
- F) not use or disclose the information contained in the magnetic stripe or in the chip on the Debit Card of a Cardholder.

### 6.3.2 Interac Network

- A) The Merchant undertakes to comply with all the rules and directives issued by the Interac Association.
- B) The Merchant undertakes to preserve the confidentiality of any information relating to the operation of the services offered through the Interac network.

## 6.4 ADDITIONAL RESPONSIBILITIES OF THE MERCHANT

**6.4.1** The Merchant undertakes to keep records of the names of any employees authorized to use and/or who have used the Desjardins Direct Payment Service so that, in the case of a fraud investigation, it can submit these records to the Federation within twenty-four (24) hours following receipt of a notice to that effect sent by the Federation in accordance with Section 24.1 hereof.

**6.4.2** The Merchant acknowledges and agrees that it must comply with the pre-established standards and time limits, as provided in Section 6.4.3 and in the Guides and Instructions, for submitting to the Federation tracing requests for Transactions made with a Debit Card that it considers problematic. The Merchant acknowledges that the Federation will not process any tracing request where the Merchant fails to submit the request in accordance with the prescribed standards and within the specified time limits.

**6.4.3** For any Transaction made with a Debit Card for an amount of fifty dollars (\$50) or less, the Merchant agrees that it has ninety (90) days after the date on which the Debit Card Transaction was made to submit a tracing request to the Federation. For any Debit Card Transaction over fifty dollars (\$50), that time period is one (1) year.

**6.4.4** The Merchant must keep any Statement resulting from a Debit Card Transaction for a period of one (1) year. Until that period expires, the Merchant shall be responsible for the Debit Card Transaction Statements and all copies relating thereto and shall keep such material in a reserved location accessible only to designated members of its personnel.

**6.4.5** The Merchant must send the Federation the original Debit Card Transaction Statement kept pursuant to Section 6.4.4 within five (5) business days of receiving such request from the Federation. The Merchant agrees to compensate the Federation for any loss resulting from the Merchant's failure to provide a requested Debit Card Transaction Statement, and hereby expressly authorizes the Federation to debit its Merchant Account accordingly, where applicable.

**6.4.6** The undertakings set forth in Sections 6.4.1 to 6.4.5 shall survive despite the termination of this Agreement regardless of the reason.

## 6.5 VISA DEBIT

**6.5.1** If the Merchant chooses to accept Transactions by Visa Debit Card, the Federation agrees to make available to the merchant a service allowing a Visa Debit Cardholder to authorize the electronic transfer of funds between the account held by the Cardholder and the Merchant Account as payment for Transactions made with the Merchant.

**6.5.2** The Parties agree that the Federation may modify the types of Visa Debit Card transactions allowed from time to time by providing the Merchant with notice to this effect. Such notice must stipulate any additional charges, terms and/or conditions then applicable to new transactions. As of the date of this Agreement, this service offers the following transactions:

- purchase
- purchase refund/discount;
- Transaction cancellation/correction;
- preauthorization/authorization payment;
- preauthorization/authorization conclusion/completion;
- preauthorization/authorization reversal;
- account verifications.

**6.5.3** The Merchant acknowledges that only Transactions stemming from a telephone, mail or Internet order are permitted under this service.

**6.5.4** The Merchant acknowledges that any Transaction made by Visa Debit Card, even if the Transaction has been authorized, constitutes for the purposes of the Agreement a Remote Transaction within the meaning of section 3.3 of the Agreement and the provisions of that section shall apply to any such Transaction, with the necessary adjustments.

## 7. DESJARDINS GIFT CARD PROGRAM

### 7.1 SCOPE OF THE DESJARDINS GIFT CARD PROGRAM'S PROVISIONS

The following provisions pertain to the Desjardins Gift Card Program, and their goal is to specify the terms and conditions for marketing the gift cards for each of the Desjardins Gift Card Programs.

### 7.2 CUSTOM GIFT CARD PROGRAM

#### 7.2.1 Federation's Obligations

The Federation undertakes to:

**7.2.1.1** offer to the Merchant the use of its magnetic stripe gift card solution which consists of purchaser activities (transaction processing), issuer activities (program and card management), financial management activities (management of deposits, reserves and transfers between Merchants) and the integration of other payment modes (card reading, reports, deposits, tracing);

**7.2.1.2** provide the Merchant with the support and advice needed to establish the parameters of the Custom Gift Card Program;

**7.2.1.3** provide the Merchant with telephone support through its Business Customer Service;

**7.2.1.4** offer gift card holders an automated telephone service from which they may obtain their gift card balance and expiry date (where applicable);

**7.2.1.5** personalize the gift cards (encoding of the magnetic stripe and indication of the 16 digit code on the back of the cards) after receiving an order to that effect;

**7.2.1.6** keep the inactive gift cards in stock (in a vault) and remain responsible for them until they are picked up.

#### 7.2.2 Merchant's Obligations

The Merchant undertakes to:

**7.2.2.1** develop and determine all of the parameters and specifications of the Custom Gift Card Program using the forms provided to that end;

**7.2.2.2** assume full responsibility for marketing the Custom Gift Card Program among all of its Participating Merchants as well as for the in-store deployment schedule;

**7.2.2.3** be responsible for and maintain control over the access granted to its participating Merchants, provide the Federation with a list of all Merchants that will participate in the program, keep that list updated and inform the Federation of any changes;

**7.2.2.4** inform all of its Participating Merchants of the terms and conditions of the Custom Gift Card Program as well as the features to which they will have access once the program is set up;

**7.2.2.5** be responsible for creating visuals for the gift cards and card holders, where applicable (graphics and development);

**7.2.2.6** comply with the technical specifications provided by the Federation relating to the design and printing of the gift cards;

**7.2.2.7** bear all costs associated with printing and distributing the cards and card holders. The cost of having the cards manufactured by a supplier designated and accredited by the Federation will vary depending on the graphics specifications and the volume of cards to be manufactured;

**7.2.2.8** bear the cost of adapting its point-of-sale software (where applicable);

**7.2.2.9** acknowledge that the Federation is in no way liable for any problem associated with the printing of the gift cards, despite the fact that the supplier retained to print the cards was designated and accredited by the Federation;

**7.2.2.10** acknowledge that it shall take delivery of the cards at the place indicated by the Federation and assume the shipping costs;

**7.2.2.11** acknowledge that the Federation is not liable for any damages resulting from the loss, theft or alteration of the cards or any fraud committed with them after the cards have been picked up at the place indicated by the Federation pursuant to Section 7.3.10;

**7.2.2.12** honour all purchases made with a gift card in its store or in its network of participating stores;

**7.2.2.13** take up the defence of the Federation and indemnify it against any claim it may be required to pay should a suit be launched by the holder of a gift card issued under this Agreement relating to the use of such card and, without limiting the generality of the foregoing, any claim for reimbursement of a lost or stolen gift card.

### **7.2.3 Financial management of Custom Gift Card Program and compensation**

**7.2.3.1** The Federation undertakes to manage the cash flow associated with the use of gift cards on behalf of the Merchant.

**7.2.3.2** The Merchant undertakes to provide a number for the business chequing account (BCA) from which all fees associated with the Custom Gift Card Program will be debited (handling and activation fees for single and batch orders).

**7.2.3.3** If the Merchant uses a reserve account to receive automatic compensations, it undertakes to provide the number of the business chequing account (BCA) that will be used to keep the amounts activated on the gift cards and to honour the value of the purchase transactions registered during the day using a gift card at one of the participating Merchants.

**7.2.3.4** The Merchant agrees that should it fail to keep sufficient amounts in any of the above accounts to pay the fees or transactions for which those accounts are intended, the Federation reserves the right to suspend, within 24 hours, all features associated with the activation and use of gift cards throughout the network of participating Merchants until the account in question is recapitalized.

**7.2.3.5** The Merchant acknowledges that the Federation shall not be responsible for guaranteeing that there are sufficient funds to compensate for gift card transactions. If a debit order is rejected, the Federation shall be fully entitled to reject a corresponding amount of credit orders.

**7.2.3.6** If the Merchant uses a reserve account to receive automatic compensations, the Federation undertakes to inform the participating Merchants that it will be debiting from their business chequing accounts (BCA) the amounts activated on the cards and depositing those amounts into the Merchant's reserve account provided to that end and that, conversely, the Federation will be crediting to their business chequing accounts (BCA) the amounts purchased using the gift cards, out of the same reserve account.

**7.2.3.7** If the Merchant wishes to charge so-called corporate fees to its participating Merchants for purchase transactions made using gift cards, the Merchant undertakes to give the participating Merchants prior notice that the Federation will be debiting their business chequing accounts (BCA) in order to deposit the said fees in the previously-identified bank account of the Merchant.

**7.2.3.8** The Merchant agrees that, should it fail to keep sufficient amounts in the business chequing accounts (BCA) of its Participating Merchants to pay the gift card transactions, the Federation reserves the right to suspend, within 24 hours, all features associated with the activation and use of gift cards for the Participating Merchants in default, until the abovementioned account is recapitalized. Should the account not be recapitalized within the allotted timeframe, the Merchant hereby authorizes the Federation to debit the necessary funds from its business chequing account (BCA) and transfer them to the reserve account for the Custom Gift Card Program.

## **7.2.4 End of Custom Gift Card Program**

**7.2.4.1** Upon expiry of the Custom Gift Card Program, the Federation undertakes to send an electronic file containing a list of the outstanding active gift cards at the Merchant's request. The list will contain the card numbers, associated balances and expiry dates, where applicable; the Federation reserves the right to determine the type (format) of file to be sent upon termination.

**7.2.4.2** The Merchant shall be responsible for establishing the procedures that need to be followed when honouring active gift card balances, in keeping with the business rules agreed upon with the gift card holders.

**7.2.4.3** Non-personalized gift cards kept in the Federation's vault shall be destroyed. Personalized gift cards that have not been activated and are in the possession of the Merchant shall be returned to the Federation to be destroyed within thirty (30) days following the expiry of the Custom Gift Card Program.

**7.2.4.4** Notwithstanding Section 20.2.2, if the Merchant decides to terminate the Custom Gift Card Program during the term of the Agreement stipulated in Section 20.1.1 even though the Federation is not in default under Section 7.2, administrative fees of \$2,500 shall be charged to the Merchant for the production of the said electronic file, the closing of all access to the Custom Gift Card Program and the destruction of the cards.

**7.2.4.5** If the Federation decides to terminate the Custom Gift Card Program during the initial term of the Agreement stipulated in Section 20.1.1, no administrative fee shall be charged to the Merchant for the production of the said electronic file, closing of all access to the Custom Gift Card Program or the destruction of the cards.

## **7.3 TURNKEY GIFT CARD PROGRAM**

### **7.3.1 Federation's Obligations**

The Federation shall:

**7.3.1.1** offer the Merchant the use of a gift card solution which includes purchaser activities (transaction processing), issuer activities (program and card management), and integration with other payment methods;

**7.3.1.2** provide the Merchant with telephone support through its Business Customer Service;

**7.3.1.3** print cards and overprint the requested information, and personalize the gift cards (encoding of magnetic stripe);

**7.3.1.4** notify the Merchant of any possible change to the point of sale terminal or connectivity (Internet access) before preparing the order, where additional fees will be charged to the Merchant; however, where the Merchant will not be charged any additional fees, the Federation will not give the Merchant such notice.

### **7.3.2 Merchant's Obligations**

The Merchant shall:

**7.3.2.1** be completely responsible for marketing the Turnkey Gift Card Program for its business, pay the costs relating to the purchase of the gift card kit, pay the cost of point of sale terminal or connectivity (Internet access) changes and pay all other costs related to setting up and using the Turnkey Gift Card Program;

**7.3.2.2** acknowledge that it must keep inactive gift cards at its business and be responsible for them;

**7.3.2.3** acknowledge that the Federation will not be liable for any damage which may result from the loss, theft or alteration of the gift cards or any fraud committed using the said gift cards after it receives them at its place of business;

**7.3.2.4** honour all purchases made using gift cards;

**7.3.2.5** indemnify the Federation and hold it harmless with respect to any amount it may be required to pay in the event it is sued by the holder of a gift card issued under this Agreement relating to the use of such card including, without limiting the generality of the foregoing, a claim for reimbursement of a lost or stolen card.

### **7.3.3 End of Turnkey Gift Card Program**

**7.3.3.1** At the end of the Turnkey Gift Card Program, the Merchant will be responsible for setting up the necessary procedures to acknowledge the balances on active gift cards, based on the business rules agreed upon with gift card holders.

**7.3.3.2** Inactive gift cards which are in the Merchant's possession shall be destroyed within ten (10) days of the expiry of the Turnkey Gift Card Program.

## **8. MERCHANT ACCOUNT**

**8.1** To benefit from any of the Desjardins Payment Services, the Merchant must have and maintain an account at the Canadian financial institution it identified when the Application Form was completed. The Merchant may also hold other accounts for the same purposes, which shall then be deemed to form part of a single Merchant Account for the purposes of this Agreement. However, the Merchant must have a Merchant Account for each of its addresses.

**8.2** The Merchant shall continue to be subject to the conditions and fees prescribed by its depository financial institution in respect of the Merchant Account. The Merchant shall give the Federation fifteen (15) days' prior written notice of any change of account. Said notice shall indicate the new account number and, where applicable, the name of the new financial institution.

**8.3** The Merchant hereby asks, and therefore authorizes the Federation, to credit or debit, as the case may be, the total amount of any Transaction to or from its Merchant Account. The Merchant acknowledges that it is the duty of the depository financial institution to credit said account the moment it receives the funds sent by the Federation.

## **9. CONDITIONS RELATING TO THE TERMINAL**

### **9.1 FEDERATION'S OBLIGATIONS**

**9.1.1** The Federation undertakes to make available to the Merchant any Terminal described in its Application Form. The Merchant acknowledges that any Terminal provided to it by the Federation pursuant to this Agreement is owned by and remains the exclusive property of the Federation or one or more suppliers.

**9.1.2** The Federation acknowledges that the Merchant may directly procure any Terminal from a supplier or any manufacturer duly approved by the Federation. However, any such Terminal must be approved by and meet the criteria of the Federation and be used only for those purposes disclosed at the time of application or for other purposes explicitly approved in writing by the Federation.

### **9.2 MERCHANT'S OBLIGATIONS**

**9.2.1** With respect to any Terminal, the Merchant agrees to:

- A)** leave any such Terminal, other than a Cellular Terminal or a Mobile Keypad, at the Place of Business where it was originally installed, except with the written authorization of the Federation;
- B)** at its own expense, provide in each of its Places of Business where Terminals are to be set up, a convenient site to install said Terminal in accordance with the appropriate installation conditions provided in the Guides and Instructions;
- C)** maintain communication between all Terminals installed in the Place of Business and the Desjardins Data Centre, in order to allow for the appropriate updating of the software and applications on such Terminals. In the event the Merchant fails to comply with this obligation or to obtain the Federation's authorization before interrupting such communication, the Merchant shall be liable for any chargeback resulting therefrom, and the Federation reserves the right to cease providing the Desjardins Payment Services to the Merchant and to terminate this Agreement in accordance with the procedure described in Section 20.5. This paragraph does not apply to the Cellular Terminal;

- D)** inform the Terminal troubleshooting department of any service interruption or any malfunction technically preventing it from providing the Desjardins Payment Services as soon as possible after becoming aware of it;
- E)** solely in the case of a Terminal provided by the Federation to the Merchant, use an inked ribbon or a paper roll meeting the Federation's specifications. The Federation shall in no event be held liable for damages caused to the Merchant or the Cardholder of a Debit Card, Credit Card or Private Label Credit Card in the event of a problem linked to the use of an inked ribbon or a paper roll;
- F)** notify the Federation as promptly as possible of any storage, theft, breakage or destruction of the Terminal, regardless of whether or not the Terminal was provided to it by the Federation. Without limiting the generality of the foregoing, the Merchant shall not, for any reason, attempt to repair, open and/or otherwise alter the Terminal unless it obtains specific authorization from the Federation to do so;
- G)** install, or cause to be installed, and operate all Terminals safely and in accordance with the Federation's Guides and Instructions;
- H)** add, at its own expense and by a supplier approved by the Federation, the Desjardins Access Keys needed to access the Desjardins Payment Services through any Terminal other than that provided to it by the Federation;
- I)** at its own expense, ensure communication between the Terminal and the Desjardins Data Centre, including through power, telephone or cellular lines, Internet connections and plugs and other techniques or methods of communication. All expenses pertaining to the Internet, telecommunications and power lines as well as all other ancillary expenses shall be paid by the Merchant;
- J)** use, maintain and document an inventory management process that includes any Terminal it uses in accordance with the Guides and Instructions, as soon as one is acquired, and send at the Federation's request an updated list of any Terminal that it has in its possession or under its control.

**9.2.2** The Merchant acknowledges that any change of Terminal not provided to it by the Federation shall be carried out at its own expense and must be made in each Place of Business within the timeframe prescribed by the Federation, even if the said change becomes necessary due to an amendment to a rule or regulation of a Card Organization or if at the request of the Federation or the Merchant, an addition to or a cancellation of a Desjardins Payment Service to which it subscribes requires a modification of the Terminal.

However, any change of Terminal that the Federation made available to the Merchant shall be carried out by the Federation at its expense, whether that change results from an amendment to a rule or regulation of a Card Organization or from an addition to or a cancellation of Desjardins Payment Services requested by the Federation or by the Merchant.

**9.2.3** The Merchant shall not be bound to disclose the Administrative Personal Identification Number (PIN) selected. The Merchant agrees to assume responsibility for all Transactions completed using its own Administrative PIN, regardless of the number of signatures normally required to gain access to the account accessed with the Administrative PIN.

**9.2.4** The Merchant is solely responsible for the consequences of the erroneous, fraudulent or unauthorized entry of data by its employees or agents or by any person with access to a Terminal.

**9.2.5** Upon termination of the Agreement, the Merchant undertakes to cease using the Terminal provided to it by the Federation and to take the necessary measures to return it to the Federation in good working order so that the Federation may take possession thereof as promptly as possible. If the Merchant is unable or fails to return the Terminal to the Federation, it undertakes, subject to any recourse available to the Federation to take possession of the Terminal, to reimburse the Federation for the cost of the Terminal as well as for any losses or damages that may result from the said default.

**9.2.6** If the Terminal was not provided by the Federation, the Merchant undertakes to: (i) proceed with destroying the Desjardins Access Keys each and every time it carries out a change of Terminal, (ii) proceed with destroying the Desjardins Access Keys no later than 60 days following termination of the Agreement in accordance with Sections 20.1, 20.2 and 20.5 hereof and, for each such destruction, (iii) provide the Federation with a certificate attesting to the said destruction.

**9.2.7** The Merchant acknowledges that all programs and software installed on any Terminal provided to it by the Federation are the exclusive property of the Federation or of its suppliers, that they are confidential and, accordingly, the Merchant undertakes to take the necessary measures to ensure the confidentiality thereof and not to make copies thereof or disclose them to anyone.

**9.2.8** Sections 9.2.3, 9.2.4, 9.2.5, 9.2.6 and 9.2.7 shall survive the termination of this Agreement regardless of the reason for such termination.



### 9.3 MERCHANT'S POINT OF SALE EQUIPMENT AND CONCENTRATOR

**9.3.1** The Federation does not provide any of the Merchant's Point of Sale Equipment or any Concentrator required to use one or more Desjardins Payment Services at a Place of Business. The Merchant must ensure that each piece of the Merchant's Point of Sale Equipment and Concentrator is approved by the Federation, which approval may be revoked at any time upon reasonable notice to this effect, in order to, without limitation, ensure the continuous improvement of Desjardins Payment Services and ensure that such services are in compliance with the rules and regulations of the various Card Organizations. The Merchant shall first obtain the Federation's approval for any change in the Merchant's Point of Sale Equipment.

**9.3.2** The Merchant shall, at its own expense, modify any of the Merchant's Point of Sale Equipment or Concentrator where such modification is rendered necessary due to an amendment to a rule or regulation of a Card Organization, within the timeframes first prescribed by the Federation.

**9.3.3** The Merchant acknowledges that the Merchant's Point of Sale Equipment or Concentrator may allow access to only certain Desjardins Payment Services. Should the Merchant wish to obtain other Desjardins Payment Services, it shall, at its own expense, make the necessary modifications to the Merchant's Point of Sale Equipment and obtain the Federation's prior approval.

## 10. FEES

The Merchant acknowledges having received the Fee Schedule and any related document establishing the fees payable for the Desjardins Payment Services, having read and understood the said schedule and documents, and states that it is satisfied therewith. Therefore, the Merchant undertakes for the term of this Agreement:

**10.1** to pay the Federation, for each Place of Business designated in the Fee Schedule or on any subsequent application, the applicable fees related to the Desjardins Payment Services;

**10.2** to pay the file setup fees charged upon the issuance of its first statement of account;

**10.3** to pay in advance, for each Terminal supplied by the Federation, the monthly rental fees agreed on from time to time and which the Federation may automatically debit from its Merchant Account as stipulated in Section 11 hereof; and

**10.4** to pay the Federation's fees or those of its authorized representatives or external auditors resulting from the exercise of its audit right provided for in Section 5.2.4, in the event that the audit reveals a breach by the Merchant of its obligations;

The fees set out in the Fee Schedule may be changed in accordance with Section 21.1 hereof.

## 11. PAYMENT AND INDEBTEDNESS

**11.1** The following amounts chargeable against the Merchant constitute a debt payable on demand to the Federation and, as such, may be debited from its Merchant Account by the Federation without prior notice or deducted from the amounts of the Invoices remitted by the Merchant to the Federation:

- A)** any amount owing by the Merchant under this Agreement or the Fee Schedule or arising from the application thereof, including the amounts payable under the regulations and rules of a Card Organization or pursuant to an obligation towards a third party caused by any of the Desjardins Payment Services from which the Merchant benefits;
- B)** all the fees payable under this Agreement, including, but not limited to, those set out in Section 10;
- C)** all adjustments payable by the Merchant, as well as the amount of any applicable tax; and
- D)** any cancelled credit or credit voucher issued by the Merchant;

Where the Merchant does not have sufficient funds in its Merchant Account, it agrees to pay the amount remaining unpaid to the Federation upon request.

**11.2** The amounts set out in Section 10.1 above may be debited from the Merchant Account on the date indicated in each monthly statement sent to the Merchant, regardless of the manner in which such statement is transmitted or when the amounts become payable to the Federation by the Merchant under this Agreement. These debits shall vary depending on what amounts the Merchant owes to the Federation. The Merchant agrees that the financial institution where the Merchant Account is held shall not be bound to verify the payment deducted in accordance with this Section 11. The Merchant acknowledges that the debit authorization granted to the Federation under this Section 11 is tantamount to granting that authorization to the financial institution.

**11.3** The Merchant declares that it understands and accepts the terms and conditions of the pre-authorized debit arrangement it is agreeing to hereunder. As stipulated in Section 11.1, the Merchant hereby waives the right to receive written notice before the first and any subsequent debit is made from its Merchant Account. The Merchant also waives the right to receive any prior notice resulting from amendments it may make to the debit authorization provided for in this Section 11, more specifically changes relating to its Merchant Account. For any change of financial institution, folio number, account number or information on the identity of the Merchant, the Merchant shall give the Federation no less than 15 days' prior written notice. Subject to the other provisions of this Agreement, the Merchant may at any time revoke the debit authorization granted under this Section 11 upon 30 days' prior written notice.

**11.4** The Merchant shall have certain rights of recourse if a debit does not comply with the pre-authorized debit arrangement set forth in this Section 11. For example, the Merchant shall have the right to be reimbursed for any debit made that is unauthorized or incompatible with the said arrangement. The financial institution shall reimburse the Merchant, on behalf of the Federation, the amounts that were erroneously debited from its Merchant Account within 10 business days following the contested withdrawal, provided the reimbursement is requested for an eligible reason. A request to that effect shall be presented to the Merchant's financial institution using the procedure the latter may indicate. Any request made after this timeframe shall be presented directly to the Federation. The Merchant agrees to allow any information contained in this Agreement to be disclosed to the financial institution, provided that the said information disclosure is directly related to and necessary for the proper implementation of the applicable pre-authorized debit rules. For information on pre-authorized debits, the Merchant may contact the appropriate customer service department of the Federation whose contact information is given at the end of this Agreement.

## 12. LIABILITY AND INDEMNIFICATION

### 12.1 LIMITATION OF LIABILITY

**12.1.1** The Federation shall not be liable for any of the following:

- A)** indirect, special, consequential, punitive or exemplary damages incurred by the Merchant or by a third party as a result of this Agreement or the use of any of the Desjardins Payment Services by the Merchant. Without limiting the generality of the foregoing, the Federation shall not be liable for any indirect, special, consequential, punitive or exemplary damages incurred by the Merchant or by a third party as a result of the use by the Merchant of a Third Party Complementary Service or a service for operations excluded from the Additional Credit Card Merchant Service;
- B)** subject to Section 12.1.2, claims, losses, fees or damages, including a shortfall or loss of profits (in this Section, the "Damages") resulting from the interruption or malfunction of the Desjardins Payment Services, Third Party Complementary Services or services for the purposes of the operations excluded from the Additional Credit Card Merchant Service, for any reason whatsoever, including but not limited to a cause that is beyond its control, or a strike or lock-out;
- C)** damages resulting from the use, the failure to use or errors made in connection with the use of the Desjardins Payment Services, Third Party Complementary Services or services for the purposes of the operations excluded from the Additional Credit Card Merchant Service, for any reason whatsoever;
- D)** damages resulting from any advertising, promotion or use of Notes or Intellectual Property Rights that is in breach of Section 4.6 or 17 of this Agreement;
- E)** damages arising from the inclusion or omission of the Notes or any other particulars in any advertising, where the said Notes or other particulars are for a purpose other than that of the Notes provided by the Federation under Section 4.6 of this Agreement;
- F)** damages caused to the Merchant or to the Cardholder of the Debit Card, Credit Card or Private Label Credit Card resulting from the use of a Merchant's Point of Sale Equipment or Concentrator. The Federation in no way warrants that

said Equipment or Concentrator is suited to the Desjardins Payment Services or will ensure continuous or uninterrupted operation of said Services;

**G)** the malfunction or interruption of the Desjardins Payment Services or other inconveniences attributable to any of the following: a Merchant's Point of Sale Equipment or Concentrator; the installation thereof; an electrical or telephone system to which a Terminal is connected, if any; any act or omission of a subcontractor or third party not authorized by the Federation; a labour dispute; or any other event the cause of which is beyond the Federation's control; and

**H)** any evaluation of the condition of any of the Merchant's Point of Sale Equipment or Concentrator that may be done when providing consulting, troubleshooting or maintenance services for the Terminal or the Desjardins Payment Services.

**12.1.2** The Federation acknowledges that it is responsible for ensuring accurate processing of Transactions made through its Desjardins Payment Services. However, the Merchant agrees to verify within thirty (30) days of being remitted or made available, including through the monthly statement regardless of the mode of transmission thereof, all debits and credits entered in its Merchant Account as a result of this Agreement, including, without limitation, the credits entered in such Account and resulting from Credit Card Transactions or Private Label Credit Card Transactions, subject to Section 3.4.3, or Debit Card Transactions, or all the debits resulting from fees charged hereunder, to ensure that they do not contain any irregularity, error or omission. In the event of such irregularity, error or omission, the Merchant agrees to immediately notify the Federation thereof in writing within the thirty (30) day period provided above. If the Merchant fails to comply with the foregoing obligations, it hereby releases the Federation from any liability and waives any recourse it may have pertaining to such debits and credits, thereby accepting the regularity and accuracy thereof.

## **12.2 INDEMNIFICATION**

**12.2.1** In addition to the specific indemnification obligations stipulated in this Agreement, the Merchant agrees to the following:

**A)** hold the Federation harmless against any suit, third party claim or damages of any nature whatsoever related to the failure by the Merchant to comply with this Agreement, including the Guides and Instructions, and to use the Desjardins Payment Services in accordance with the conditions stipulated herein, and to indemnify the Federation for all damages and interest it may sustain and for all extrajudicial costs it may incur in this respect;

**B)** hold the Federation harmless against any suit, third party claim or damages of any nature whatsoever a) by a Cardholder in respect of a Credit Card Transaction or Private Label Credit Card Transaction evidenced by an Invoice, b) by any person from whom the Merchant has reclaimed or attempted to reclaim a Credit Card or Private Label Credit Card after the Merchant was requested to do so, and c) by any person owing to an act or omission by the Merchant or the unauthorized use of the Visa Merchant Service or MasterCard Merchant Service, and to reimburse the Federation for the damages sustained, as well as for the legal fees and extrajudicial costs that it has incurred in this respect;

**C)** hold the Federation harmless and bear the cost of the repair or replacement of any Terminal provided to it by the Federation required by any damage (except for normal wear and tear) or resulting from the loss, destruction or alteration thereof, including, without limitation, any damage caused by a fortuitous event, force majeure, fire, theft, a problem with the installation or power supply, vandalism or any other cause attributable to the Merchant's negligence or improper use of said Terminal; and

**D)** hold the Federation harmless against any suit or claim of a third party that may sustain injuries or property damage not attributable to the Federation's negligence but resulting from any of the Desjardins Payment Services, and to reimburse the Federation for the damages incurred, as well as for the legal fees and extrajudicial costs that it has incurred in this respect.

**12.2.2** The Merchant shall be liable for any damage resulting from the access gained by its authorized users or by any other person, as well as any access gained by means of an electronic tablet, smartphone or other device, or other sales-facilitating tool that it uses in the normal course of its commercial activities. The Merchant agrees to notify the Federation of any change regarding the users who are authorized to access its file stored on any Web Application or Mobile Application, any portal or any other system made available to it by the Federation to facilitate management of its Desjardins Payment Services. Without limiting the generality of the foregoing, the Merchant shall, as soon as possible after any such change, notify the Federation thereof so that the latter may deactivate or take any measure whatsoever to remove a user from its file. Furthermore, the Merchant shall notify the Federation the moment it becomes aware that an unauthorized person has accessed or attempted to access its file stored on any Web Application or Mobile Application, portal or other system made available to it by the Federation to facilitate management of its Desjardins Payment Services as well as any electronic tablet, smartphone or other device, or other sales-facilitating tool used by it in the normal course of its commercial activities.

**12.2.3** The Merchant shall be liable for any problem accessing the Desjardins Payment Services due to the failure on its part to comply with this Agreement, or due to the facilities reserved for the Terminal, the power supply, electrical installation, communications network or Internet; the Merchant releases the Federation from any responsibility for the foregoing. The Merchant agrees to indemnify the Federation for any damage to or problem at a Terminal caused by an inked ribbon, paper roll, the Merchant's Point of Sale Equipment, the power supply, a communications network or the Internet.

**12.3** The Federation does not warrant that the Desjardins Payment Services or the Third Party Complementary Services will function without error or interruption. Similarly, the Federation grants no warranty except as stipulated in this Agreement, and such warranties supersede any other warranty, whether expressed or implied, including any legal warranty.

**12.4** The Merchant acknowledges and agrees that any conflict concerning the quality of the services or goods provided by the Merchant following a Transaction made through the Desjardins Payment Services, only concerns the Merchant and the customer involved without in any way involving the Federation.

**12.5** Section 12 survives the termination of this Agreement regardless of the reason for such termination.

## 13. CONFIDENTIALITY AND INFORMATION SECURITY

### 13.1 MERCHANT'S CONFIDENTIALITY UNDERTAKINGS

**13.1.1** The Merchant agrees to keep confidential all information about its customers, Cardholders and Transactions (including, without limitation, Invoices, Drafts, credit notes, customer contracts, rental contracts, carbon copy papers, etc.), to use such information solely for the purposes of carrying out a Transaction, and to limit access thereto to selected members of its personnel whose duties require that they have access to such information. Without limiting the generality of the foregoing, the Merchant agrees:

- A)** not to disclose or give to any third party, the names or numbers shown on a Debit Card, Credit Card or Private Label Credit Card or on any other document. The same holds for any other information contained on the magnetic stripe, chip or contactless chip of any such card;
- B)** not to make lists of the Cardholders of Debit Cards, Credit Cards or Private Label Credit Card or lists of information on the Transactions; and
- C)** to keep confidential any other information disclosed to the Merchant pursuant to this Agreement, including information regarding or disclosed from time to time by the Federation and the Card Organizations.

**13.1.2** the Merchant agrees to the following with respect to the storage of the information referred to in Section 13.1.1:

- A)** store in a safe and secure manner all documents or records, regardless of their format, containing names of Cardholders of Debit Cards, Credit Cards, Private Label Credit Cards, account numbers or other Transaction information;
- B)** implement the necessary security measures and procedures to protect, maintain the confidentiality of and dispose of the information contained in the batch closing reports;
- C)** not store, particularly in the Merchant's Computer Systems, any data or information pertaining to Cardholders that was obtained at the time of a Transaction, except where such storage is permitted by the Guides and Instructions; and
- D)** after the retention period provided for in Sections 3.2.3 and 6.4.4 hereof, to safely destroy all Drafts, Invoices and Statements resulting from a Transaction and other documents associated with a Transaction.

## 13.2 MERCHANT'S OBLIGATIONS RESPECTING SECURITY OF INFORMATION

For each Transaction made through the Merchant's Computer Systems, the Merchant undertakes to:

**13.2.1** comply with the Guides and Instructions, PCI DSS and other payment card industry standards concerning the security of account information prescribed by various stakeholders, such as Credit Card and Debit Card issuers when they are applicable with respect to the storage, processing and transmission of data regarding Cardholders of Credit Cards and Debit Cards.

**13.2.2** comply with the following specific requirements set out in the PCI DSS applicable to the Merchant's Computer Systems:

**A)** establish and maintain a secure network, and in particular:

- (i) install and maintain a firewall configuration to protect data; and
- (ii) not use supplier default parameters for passwords and other security parameters.

**B)** protect Cardholder data by protecting stored data and encrypting the transmission of Cardholder data and sensitive information across public networks.

**C)** implement and maintain a vulnerability management program, and in particular:

- (i) use and regularly update anti-virus software; and
- (ii) develop and maintain secure systems and applications.

**D)** implement and maintain strong access control measures, and in particular:

- (i) restrict access to data to persons with a need to know same; and
- (ii) assign a unique user code to each person with computer access; and
- (iii) restrict physical access to Cardholder data.

**E)** regularly monitor and test networks, and in particular:

- (i) ensure tracking and monitoring of all access to network resources and Cardholder data; and
- (ii) regularly test security systems and processes.

**F)** maintain an information security policy.

**13.2.3** promptly notify the Federation, pursuant to Section 24 hereof, of any occurrence compromising or likely to compromise the security of the information referred to in this Section 13, including in the event of any failure of the Merchant's Computer Systems or of a security measure, in the event of fraud, breach of confidentiality, identity theft or unauthorized access.

## 13.3 MERCHANT'S FAILURE TO COMPLY

In addition to the other rights of the Federation provided in this Agreement, in the event the Merchant fails to comply with its obligations under this Section 13:

**13.3.1** the Federation may, without prior notice and at its sole discretion, interrupt any Desjardins Payment Service and advise the relevant Card Organization; and

**13.3.2** the Merchant shall be liable and agrees to indemnify and hold harmless the Federation against any damages, penalty, fine, claim and other expenses the Federation might incur, such as legal, extrajudicial, auditing, investigation, monitoring and/or reissuing fees, as the case may be, resulting from such a breach on the part of the Merchant.

#### **13.4 ARRANGEMENTS WITH A THIRD PARTY**

Notwithstanding Section 13.1.2 of this Agreement, if the Merchant makes arrangements with a third party for the purposes of storing, processing or transmitting data related to a Transaction or a Cardholder, including for purposes of collecting, processing or storing the names of Cardholders, account numbers or other Transaction information, the Merchant agrees (i) to inform the Federation thereof immediately in accordance with Section 24, (ii) to execute a written contract with such third party setting forth the obligations regarding the confidentiality and security of information that are similar to those provided for in this Agreement and (iii) to ensure that the certifications required pursuant to PCI DSS, where applicable, are held by the third party at all times.

#### **13.5 FEDERATION'S CONFIDENTIALITY OBLIGATIONS**

The Federation agrees that any information it might obtain hereunder relating to fund movements within the Merchant's Place of Business shall remain confidential, unless written instructions to the contrary are received from the Merchant.

**13.6** Section 13 survives the termination of this Agreement regardless of the reason for such termination.

### **14. AUDIT RIGHT**

**14.1** The Merchant agrees to allow the Federation or any of the Card Organizations or associations referred to in Section 13.2.1 to inspect its premises and the Merchant's Computer Systems to verify that (i) the files relating to the Transactions, including the Drafts, Invoices and Statements, are maintained in accordance with the Merchant's obligations set forth in this Agreement; (ii) the information referred to in Section 13 is processed and stored in a confidential and secure manner in accordance with this Agreement; (iii) the Merchant's Computer Systems comply with the standards prescribed in the Guides and Instructions and the PCI DSS, and the standards referred to in Section 13.2.1; and (iv) the Merchant complies with its other obligations under this Agreement. The Merchant further agrees to allow the Federation to inspect any Terminal in order to ascertain the integrity of its application and of the Terminal.

**14.2** The Merchant agrees to cooperate with the Federation and any entity referred to in Section 14.1 in the exercise of its audit rights, particularly regarding the loss or theft of the names of Cardholders, card numbers or any other information on the Transactions.

**14.3** As part of the inspections referred to in this Agreement, specifically in Sections 14.1 and 14.2, and upon any renewal of the service or program provided for herein, the Merchant agrees to provide all financial statements as well as any financial information that may concern the Merchant or its subsidiaries, its parent corporation or any other member of its group that the Federation may request. The Merchant specifically agrees to take any measure required to provide the said documents within a commercially reasonable timeframe.

### **15. AUTHORIZATION TO COLLECT INFORMATION**

**15.1** The Merchant agrees that the Federation may collect at any time and from any person, all commercial and credit information it deems necessary regarding its solvency or its commercial activities, and said persons are hereby authorized to disclose such information to the Federation. The Federation is authorized to disclose the information collected to any person with whom the Merchant maintains a business relationship as well as any credit-reporting agency or information agent.

### **16. RISK MANAGEMENT**

**16.1** To guarantee the performance of the Merchant's obligations under this Agreement, the Federation may, at any time, upon written notice to the Merchant to this effect, at its discretion:

**16.1.1** require the Merchant to grant it security (a hypothec in Quebec) against the Merchant Account, against any other account opened by the Merchant with a financial institution, or against any other type of claim or debt provided for by law; or

**16.1.2** request the payment of a security deposit, in any form whatsoever, the setting up of a reserve account, the issuance of a letter of guarantee from a bank or institution recognized by and acceptable to the Federation, in favour of the Federation;

In accordance with such terms and conditions as are determined by the Federation. The Merchant undertakes to sign any agreement and take any action necessary to ensure the validity and enforceability of one or more of the security interests or guarantees required under this Section 16.

## 17. INTELLECTUAL PROPERTY

The Merchant agrees that all the Intellectual Property Rights, as well as any other right, title and interest in respect of the concepts, techniques, ideas, information and equipment, regardless of the medium in which they are contained (including images or data) provided to the Merchant by the Federation shall at all times remain the exclusive property of the Federation or of the suppliers with which the Federation has signed an agreement.

## 18. ADVERTISING AND TRADEMARKS

**18.1** The Merchant undertakes to display in plain view in its premises the standard vignettes and posters provided by the Federation, indicating that Credit Cards and Debit Cards are accepted for payment purposes. The Merchant also undertakes to:

**18.1.1** obtain the prior approval of the Federation before using any advertising material where any of the following visibility elements appear: the name of the Federation; the Visa® trademark; the blue, white and gold stripes; the Visa Brand Mark; the Visa Brand Mark with Electron Identifier; any other Visa-owned marks; or any advertising material on which these brands or stripes are reproduced. Should the Federation approve any such advertising material, that approval shall be adequately limited to the presentation of the visibility elements described above, and not to the legality of the advertising contents;

**18.1.2** obtain the prior approval of the Federation before using any advertising material where any of the following visibility elements appear: the MasterCard® trademark; the distinctive interlocking circles; any other MasterCard-owned marks; or any advertising material on which these brands or patterns are reproduced. Should the Federation approve any such advertising material, that approval shall be adequately limited to the presentation of the visibility elements described above, and not to the legality of the advertising contents;

**18.1.3** obtain the prior approval of the Federation before using any advertising material featuring the *Interac*® trademark or any other mark owned by the Interac Association, or on which these brands are reproduced. Should the Federation approve any such advertising material, that approval shall be adequately limited to the presentation of the visibility elements described above, and not to the legality of the advertising contents.

**18.2** The Merchant acknowledges that (i) the Visa name and any name or logo related thereto are the property and trademarks of Visa (Canada) Corporation and/or Visa Inc. (ii) the name MasterCard and any name or logo related thereto are the property and trademarks of MasterCard Canada Inc. and/or MasterCard International Inc., (iii) the name Desjardins Direct Payment Service, its logo and related marks are the property and trademarks of the Federation, and (iv) the name Interac and any name or logo related thereto are the property and trademarks of Interac Inc.

**18.3** Subject to the limitations relating to signs set out in the leases under which it occupies its Places of Business, the Merchant agrees to display, in plain view of customers, the Interac direct payment service trademark in its various Places of Business, in accordance with the promotional material supplied to it by the Federation.

**18.4** The Merchant acknowledges that it is entitled to use the Desjardins Direct Payment Service trademark, its logo and its identifying marks only in compliance with the conditions prescribed from time to time by the Federation. In the event this Agreement is terminated, the Merchant undertakes not to contest any property rights held by the Federation.

## 19. ARBITRATION

**19.1** Subject to Section 19.3, any dispute between the Federation and the Merchant that they are unable to resolve shall be confidentially and definitively resolved by arbitration involving a single arbitrator in accordance with the procedure set out in articles 940 and following of the Code of Civil Procedure (Québec), it being understood that such arbitration shall be held in Montreal, unless the Federation and the Merchant decide otherwise.

**19.2** Any decision rendered by an arbitrator in accordance with this Section 19 shall:

- be final and binding between the Federation and the Merchant;
- not be subject to any other proceeding before the courts of law other than those required for the homologation (certification) and execution of the decision by a competent court with jurisdiction over the matter; and
- not be disclosed to third parties unless such disclosure is required by the applicable law for purposes of the execution of the decision for other similar purposes;

The costs of arbitration, including professional fees and disbursements, shall be awarded by the arbitrator as they see fit in the circumstances.

**19.3** Notwithstanding Section 19.1, the Federation shall be entitled to apply to a court of law respecting the exercise of any extraordinary recourse, seizure before judgment or other recourse based on the fraud or deceitful manoeuvres of the Merchant, respecting the exercise of a property right by the Federation or respecting the recovery of any amount owing to the Federation by the Merchant, including the amount identified in Section 11.1.

## 20. TERM AND TERMINATION

### 20.1 TERM AND RENEWAL

**20.1.1** This Agreement takes effect on the acceptance date of its terms and conditions by the Merchant established in accordance with Section 1 of this Agreement. It has an initial term of three (3) years and shall thereafter be automatically renewed for terms of one (1) year, subject to the provisions governing termination.

**20.1.2** Upon expiry of the initial term of this Agreement or of any subsequent annual renewal, the Federation or the Merchant may, without payment of any termination cost described in Section 20.2.2, terminate this Agreement with respect to one or more Desjardins Payment Services, subject to Sections 3.1 and 6.1.1, by sending the other Party a notice of its intention to terminate. Such notice must be sent at least sixty (60) days before the end of the initial term or any annual renewal.

### 20.2 TERMINATION WITHOUT BREACH

Notwithstanding Section 20.1:

**20.2.1** the Federation may terminate this Agreement in respect of one or more Desjardins Payment Services at any time upon giving sixty (60) days' prior written notice to the Merchant; and

**20.2.2** the Merchant may terminate this Agreement at any time with respect to one or more Desjardins Payment Services, subject to Sections 3.1 and 6.1.1, upon payment to the Federation of a termination fee equal to three hundred dollars (\$300). This fee is payable on the date of termination;



### 20.3 BREACH

A Party will be deemed in breach of this Agreement upon the occurrence of any of the following events, namely if the Party:

**20.3.1** fails to abide by the terms and conditions of this Agreement;

**20.3.2** becomes unable to meet its obligations as they generally become due or ceases paying its current obligations in the ordinary course of business as they generally become due;

**20.3.3** becomes insolvent or bankrupt, makes an assignment of its property within the meaning of the Bankruptcy and Insolvency Act, files a notice of intent or a proposal or resorts to any law pertaining to arrangements with creditors such as the Companies' Creditors Arrangement Act, in a context where proceedings to liquidate the company are undertaken.

### 20.4 BREACH SPECIFIC TO THE MERCHANT

The Merchant shall also be deemed in breach of this Agreement upon detection by the Federation: (i) of the Merchant's fraudulent conduct or deceitful manoeuvring, (ii) of actions or conduct of such a nature as to prejudice, bring disrepute upon or cause losses to the payment system of any of the Card Organizations, (iii) that the Merchant's property is the subject of seizure, administrative garnishment by a federal or provincial tax authority, registration of a legal hypothec, prior notice of exercise of a hypothecary right, or any legal proceeding whatsoever that jeopardize the rights of the Merchant or the Federation, unless the Merchant elects to challenge the seizure, administrative garnishment, registration of legal hypothec or instituted proceedings, in which case the Merchant must satisfy any request made by the Federation to secure future transactions made through the Merchant.

### 20.5 TERMINATION FOR BREACH

**20.5.1** In the event of a breach by the Merchant as set out in Sections 20.3 and 20.4, and subject to any other right of the Federation stipulated herein, the Federation may, without further notice or delay and notwithstanding Section 20.2.1, terminate this Agreement for all legal purposes in respect of one or more Desjardins Payment Services.

**20.5.2** In the event of a breach by the Federation as set out in Section 20.3, the Merchant may terminate this Agreement for all legal purposes in respect of one or more Desjardins Payment Services, subject to Sections 3.1 and 6.1.1 and upon giving 10 days' prior written notice to the Federation, unless the Federation has remedied such failure prior to expiry of the notice period.

### 20.6 EFFECTS OF TERMINATION

In all cases of termination, the following shall apply:

**20.6.1** the obligations of the Parties with respect to any Transaction completed before the date of termination of this Agreement shall remain in force after such termination regardless of the reason for such termination;

**20.6.2** the Merchant shall immediately cease using, and return to the Federation, all Terminals provided to it by the Federation, all forms and any other equipment related to the relevant Desjardins Payment Service(s), bearing the corporate name or trademark owned by the Federation or a Card Organization, such as the Visa® trademark or the blue, white and gold stripes, the Visa Brand Mark, the Visa Brand Mark with the Electron Identifier or any other Visa owned marks, the MasterCard® trademark or MasterCard's distinctive interlocking circles, the Desjardins Direct Payment brand, or the Interac mark, or on which the said corporate names or marks are reproduced, as the case may be. The Merchant shall not subsequently indicate that it accepts Visa Credit Cards, MasterCard Credit Cards and/or Additional Credit Cards, or that it offers the Desjardins Direct Payment Service, as the case may be, pursuant to this Agreement.

## 21. AMENDMENTS

**21.1** Notwithstanding any provision of this Agreement:

(i) the amounts that may be invoiced to the Merchant in accordance with this Agreement with regard to Debit Card and Credit Card transactions may be increased and other fees added at any time by the Federation by giving the Merchant ninety (90) days, written notice to this effect, in compliance with the Code of Conduct referred to in section 29 herein.

(ii) any other provision of this Agreement, the related terms and conditions and any of the Desjardins Payment Services provided within may be amended, added and/or withdrawn at any time by the Federation, by giving the Merchant thirty (30) days written notice to this effect.

However, these notices do not apply to:

i) any amendment regarding the amounts that may be invoiced to the Merchant with regard to Desjardins Accord D Financing Services, which shall take effect on the date determined in the written notice provided to the Merchant.

ii) any amendment resulting from a change in the PCI DSS, which shall take effect on the date determined by the PCI Security Standards Council.

**21.2** If the Merchant receives a notice of Amendment in accordance with Section 21.1 and fails to notify the Federation in writing before expiry of the said notice that it is terminating the Agreement, or that it is continuing to pay fees for the Desjardins Payment Services, the Merchant shall be deemed to have accepted the Amendments appearing in the notice sent by the Federation.

**21.3** If, however, prior to expiry of the said notice, the Merchant notifies the Federation that it intends to terminate this Agreement, the terms and conditions provided for in Sections 20.1, 20.2 and 20.3 shall not apply. Any Amendment to this Agreement requested by the Merchant shall be subject to the prior approval of the Federation.

## 22. GUIDES AND INSTRUCTIONS

**22.1** In addition to the specific references in this Agreement, the Federation may, from time to time, issue Guides and Instructions concerning the Merchant's rights and obligations respecting any Desjardins Payment Services governed by this Agreement. Subject to an implementation period granted by the Federation, upon receipt, such Guides and Instructions shall be binding on the Merchant.

## 23. ASSIGNMENT

**23.1** This Agreement is binding on the parties and their heirs, successors and assigns, and it may not be assigned by the Merchant without the consent of the Federation.

**23.2** Subject to the rules and regulations of the relevant Card Organization, the Federation reserves the right to transfer all or part of its rights and obligations provided in this Agreement to a third party, without notice to the Merchant or its authorization. Should the Federation notify the Merchant of such a transfer and a Transaction is subsequently the subject of a service described in this Agreement, the Merchant agrees that the Federation is then discharged from any obligation arising under this Agreement and the Merchant waives any rights it may have against the Federation as of the date of the Transaction.

## 24. NOTICE

**24.1** Any notice to be given hereunder must be delivered by hand or sent by prepaid mail to the Merchant's address mentioned on the Application Form. Notices to the Federation shall be given to the following address, subject to notice to the contrary:

Fédération des caisses Desjardins du Québec  
Desjardins Card Services  
Merchant Payment Solutions  
425 Viger Avenue West  
Montreal, Quebec H2Z 1W5

Subject to the terms of Section 20 hereof, notices given by mail are deemed to have been received on the third business day following the date they are mailed.

## 25. GOVERNING LAW

**25.1** This Agreement is governed by the laws in force in the Province of Quebec and by the applicable federal legislation applicable therein.

## 26. SEVERABILITY

**26.1** Any provision of this Agreement that is declared invalid or unenforceable shall in no way affect the validity or enforceability of the other provisions hereof, and shall be deemed severed from this Agreement.

## 27. ENTIRE AGREEMENT

**27.1** Unless otherwise agreed to by the parties, this Agreement, the Application Form and the Fee Schedule constitute the entire and definitive agreement between the parties concerning the Desjardins Payment Services and supersede any agreement, contract, representation, discussion and all oral or written undertakings reached between the parties prior to the date hereof.

## 28. WAIVER

**28.1** Either party to this Agreement may waive all or part of the benefits granted hereunder or its right to claim a breach or default of the provisions hereunder. No waiver shall be binding upon the waiving party unless it is made in writing.

**28.2** The failure or delay by either party to exercise any right, remedy or privilege under this Agreement may not be regarded as a waiver by that Party of the exercise of such right, remedy or privilege nor may it be regarded as a waiver of any subsequent breach or default.

## 29. CODE OF CONDUCT FOR THE CREDIT AND DEBIT CARD INDUSTRY IN CANADA

**29.1** The Federation abides by the Code of Conduct for the Credit and Debit Card Industry in Canada, and this Agreement complies with the provisions of that Code. For more information, go to [www.fin.gc.ca/n10/data/10-049\\_1-eng.asp](http://www.fin.gc.ca/n10/data/10-049_1-eng.asp).

**TO CONTACT US:**

**Business Customer Service:**

Montreal: 514-397-4450 Toll free: 1-888-285-0015

**POS Terminal help desk:**

Montreal: 514-281-2880 Toll free: 1-800-363-3514

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