1. INTRODUCTION

These terms and conditions ("**Terms and Conditions**") and the following documents form your merchant agreement (the "**Agreement**") with The Toronto-Dominion Bank:

1.1 any information provided by you with your application for Merchant Services, whether verbally or in writing (your "**Application**");

1.2 Information Summary Box (Summary of Key Elements of the Agreement);

1.3 Fee Disclosure Box (Cost Per Transaction Disclosure);

1.4 Fee Schedule;

1.5 TD Privacy Policy;

1.6 all other documents referred to in these Terms and Conditions as being incorporated by reference into the Agreement; and

1.7 any other document or procedure we may provide or make available to you during the term of this Agreement that we indicate forms part of this Agreement.

2. DEFINITIONS

In these Terms and Conditions:

2.1 "**merchant**", "**you**" and "**your**" refer to the merchant who completed and submitted an Application, or on whose behalf an Application was completed and submitted to us.

2.2 "**we**", "**us**", "**our**" and "**TD**" means The Toronto-Dominion Bank.

2.3 Any capitalized words that we use in these Terms and Conditions are defined in Section 23.

3. EFFECTIVE DATE AND MERCHANT SERVICES

3.1 This Agreement will take effect on the date that we create the Merchant Account(s) for the Merchant Services that you requested in your Application (the "**Effective Date**"). For all Agreements entered into or renewed on or after March 1, 2017, the Effective Date is set out in your Information Summary Box (Summary of Key Elements of the Agreement). You confirm that you: (i) have read and agree to be bound by this Agreement; (ii) will use the Merchant Services according to the terms of this Agreement; and (iii) will pay all amounts that become payable by you under this Agreement, when they become due.

3.2 We will provide you with the Merchant Services that you have selected on your Application and that we approve. If you request additional Merchant Services during the Term of this Agreement and we agree to provide them to you, then we may, in our sole discretion:

3.2.1 create one or more additional Merchant Account(s) (unique merchant identification numbers) for you in connection with the additional Merchant Services, and we may provide you with a new application and/or agreement that will cover the additional Merchant Services. If we provide you with a new agreement, it will govern the additional Merchant Services but, unless we advise you otherwise, it will not replace this Agreement, which will also remain in full force and effect; or

3.2.2 provide the additional Merchant Services under your existing Merchant Account, in which case this Agreement will also govern those additional Merchant Services unless we advise you otherwise.

3.3 We may provide some or all of the Merchant Services through one or more affiliates or service providers.

3.4 You must tell us immediately of any change in the information provided by you with your Application, and of any material changes in the nature of your business or the way you do business, including if you start to accept Card Not Present Transactions. As a result of a change in your business, we may amend or terminate this Agreement as permitted by Section 22.3 (Amendment) or Section 18 (Termination).

3.5 You may:

3.5.1 accept Cards from one Payment Card Network without also accepting Cards from another Payment Card Network; and

3.5.2 opt out of accepting Cards from any Payment Card Network at any time without penalty by providing us with written notice, and this will not affect your right to accept Cards from any other Payment Card Network.

However, if you choose to accept or opt out of accepting Credit Cards from one Payment Card Network, you must accept or opt out of accepting all Credit Cards from that Payment Card Network.

If you opt out of accepting all Cards pursuant to this Section, you will be considered to have terminated this Agreement and Section 18.6 will apply.

3.6 **Routing Services.**

3.6.1 With our approval, you may use Terminals, equipment, point of sale software applications and Electronic Commerce Facilities to submit Routed Transactions to us for processing. Before giving this approval we may require certification testing of Terminals, equipment, point of sale software applications or Electronic Commerce Facilities and you will be responsible for all costs incurred by us with respect to such testing. You may not make any changes to Terminals, equipment, point of sale software applications or Electronic Commerce Facilities without our prior written consent.

3.6.2 If we process Routed Transactions for you, you must have one or more valid agreements in place with the applicable Third Party(ies) for the acceptance of the relevant Credit Card, Debit Card or gift card, or for your participation in the relevant loyalty program, as applicable.

3.6.3 In processing Routed Transactions our responsibilities are limited to routing the transactions from you to the applicable Third Party through our communications network.

3.6.4 The fees payable for Routed Transactions are set out in the Fee Schedule.

4. EXCLUSIVITY

4.1 Unless we agree otherwise in writing, you will use us exclusively as your provider of Merchant Services during the Term of this Agreement. You will not be in breach of this exclusivity obligation for the first thirty days following the Effective Date if you are transitioning to TD from a different service provider.

4.2 If we supply you with a Terminal, unless we agree otherwise in writing, we will be your exclusive Terminal provider during the Term.

5. COMPLIANCE WITH LAW; PAYMENT CARD NETWORK RULES; OTHER PROCEDURES

5.1 You will comply with all applicable laws in connection with your use of the Merchant Services and the performance of your obligations under this Agreement.

5.2 **Payment Card Network Rules.**

5.2.1 You will comply with the Payment Card Network Rules as they apply to you in your use of the Merchant Services and all applicable Payment Card Network Rules are incorporated by reference into this Agreement.

5.2.2 We will use reasonable efforts to make links to current Payment Card Network Rules available to you on the Merchant Solutions Website at tdmerchantsolutions.com, but the Payment Card Network Rules may change from time to time without notice to you or us. We will have no liability to you for failing to provide access to the current Payment Card Network Rules, and you remain solely responsible for complying with the current Payment Card Network Rules at all times.

5.2.3 If you accept American Express Cards through the OptBlue Program, in addition to this Agreement, you also agree to comply with the *American Express Program Merchant Guide* made available from American Express online at americanexpress.ca/merchantguide.

5.3 In addition to the Payment Card Network Rules, we may at different times provide you with or make available to you various other procedures, forms, rules, instructions, manuals and Payment Card Network-mandated systems or operational changes. You will implement and comply with all of these procedures, forms, rules, instructions, manuals and changes.

5.4 You are responsible for the conduct of your employees, agents and representatives and their compliance with this Agreement and applicable law.

5.5 Payment Card Networks may develop and offer additional services to you from time to time, including but not limited to security standards (e.g. using 3-D secure protocols), and make these available to you as separate services. You must notify us in advance if you intend to enroll in or adopt such services, and in that case the terms and conditions of such services are set by the Payment Card Networks and we are not responsible for the operation of such services, or your compliance with the terms of such services. The provisions of this Agreement between you and us will continue to apply to and govern each Transaction and Routed Transaction, including our rights in respect of Chargebacks and to suspend the services we provide under this Agreement.

6. ACCEPTING CARDS

6.1 You will accept all Cards presented by a customer for payment in respect of any Transaction.

6.2 You will submit all Transactions and Routed Transactions to us for Authorization in accordance with the terms of this Agreement and any other standards and procedures that we may notify you of from time to time.

6.2.1 You understand that an Authorization only indicates approval by a Card issuer or Third Party that a Transaction or Routed Transaction may proceed and does not mean that a Transaction or Routed Transaction is authentic or valid.

6.2.2 If you have received an Authorization, this does not limit our rights under this Agreement, including our right to refuse to process a Transaction or Routed Transaction or to Chargeback the amount of the Transaction.

6.3 You may:

6.3.1 offer customers a price that is lower than your ticketed or posted price for goods and services (a "**Discount**") if the customer uses cash or another form of payment to purchase the goods and services. You may also provide customers with different Discounts for using different Payment Card Network brands. You must clearly communicate any Discount at the point of interaction with your customers; or

6.3.2 impose a fee or charge on customers for the use of a Card as a means of payment, provided that such fee or charge is permitted by the Payment Card Network Rules and applicable law (a "**Permitted Surcharge**") and that you display a notice of any such Permitted Surcharge as required by the Payment Card Network Rules.

6.4 You will not do any of the following in respect of a Transaction or a Routed Transaction:

6.4.1 impose a fee or surcharge that is not a Permitted Surcharge, including without limitation charges that are prohibited under the Quebec *Consumer Protection Act*, or directly apply a surcharge to any Cardholder in respect of an Interac debit Transaction;

6.4.2 require that a minimum amount of goods or services be purchased before accepting a Card;

6.4.3 anything that discriminates against or discourages use of one Card in favour of another Card, except that you may offer Discounts as explained in Section 6.3;

6.4.4 attempt to obtain multiple Authorizations for a single Transaction on a single Card or to reduce or disguise the amount of any Transaction by the use of multiple Transaction Records (known as "split ticketing");

6.4.5 process a Transaction for another individual or entity (known as "factoring");

6.4.6 submit any Credit Card Transaction that represents a cash advance or the refinancing of an existing obligation of a Cardholder, including any obligation that the Cardholder owes to you;

6.4.7 accept Cards for types of businesses, goods or services that we or a Payment Card Network deem unacceptable, including without limitation: businesses, goods or services that are prohibited by law (including counterfeit, unlicensed or otherwise unauthorized goods); gambling (including games of chance and games of skill); adult content and services (including escort and dating services); money services businesses (including pay day loans, cheque cashing, currency exchange, remittance, white label ABMs); factoring, debt repayment/purchase collection agencies; financial trading platforms; crypto merchants (exchanges, wallet providers or on-ramp providers); online pharmacies or internet pharmacy referral sites; unfair, predatory or deceptive products or services (including pyramid sales, telemarketing and negative option marketing; cannabis sales; cross-border card not present vaping and tobacco sales; other high risk industries (including vehicle exporters, weapons manufacturers or arms brokers, computer technical support offshore, social media businesses that sell or provide online traffic or engagement, web hosting, online auction houses, businesses that buy or offer NFTs, video game or virtual world credits, or cyberlockers and similar remote digital file-hosting and sharing services);

6.4.8 submit a Transaction where a Card was used that we had notified you not to honour, that has been declined or in respect of which you have been unable to obtain an Authorization; or

6.4.9 knowingly submit any Transaction that is illegal or that you should have known was illegal.

6.5 You will submit all Transactions to us within two calendar days of the date of the Transaction in order to meet Payment Card Network presentment timelines and to avoid additional fees and charges applicable to late Transactions. If you fail to close a Batch (if applicable) within this period, we have the right to close the Batch at any later time.

6.6 If any Transaction submitted to us by you or your third party provider is not readable or capable of being processed because it does not comply with our standards, that Transaction will not be processed by us or credited to your Account.

6.7 If you elect to accept payments using the Google Pay service, then you hereby agree to the Google Pay and Google Wallet API Acceptable Use Policy and API Terms of Service available at these links: https://payments.developers.google.com/terms/aup and https://payments.developers.google.com/terms/sellertos, each as may be updated by Google from time to time.

7. CARD PRESENT TRANSACTIONS

7.1 For Card Present Transactions, you will follow the instructions and prompts on the Terminal in order to complete the Transaction, which may include obtaining the Cardholder's signature, and you will complete and provide to the Cardholder a Transaction Record once the Transaction is complete.

7.2 If a Card Present Transaction is processed using a PIN, the provisions set out in Schedule A will apply.

7.3 If a Card Present Transaction, other than a Contactless Transaction, is processed other than by using a PIN, including because your Terminal does not function or the Authorization System is Off-Line, the provisions set out in Schedule B will apply.

8. CARD NOT PRESENT TRANSACTIONS

8.1 You understand that Card Not Present Transactions carry a greater risk of rejection by Cardholders, and refusals and Chargebacks by us, because the Transaction is conducted without you, the Cardholder and the Card all being present in the same location.

8.2 You may not accept Internet Transactions without our prior written approval. If we have agreed to process Internet Transactions for you, the requirements set out in Schedule C apply.

8.3 You may obtain permission from a Cardholder to periodically bill that Cardholder's Credit Card for a Recurring Transaction where that is permitted by a Payment Card Network, and in accordance with the applicable Payment Card Network Rules.

9. TRANSACTION REPRESENTATIONS AND WARRANTIES

9.1 Each time you submit a Transaction you represent and warrant the following to us in respect of that Transaction:

9.1.1 it involves the purchase of goods or services from your business located or conducted in Canada;

9.1.2 it represents a genuine sale of goods or services or, in the case of a Debit Card Transaction, the advance of money, in the ordinary operation of your business;

9.1.3 the Transaction was entered into by you and the Cardholder and represents an obligation of the Cardholder for the amount of the Transaction (including taxes and any Permitted Surcharge), not more or less;

9.1.4 the amount charged for the Transaction is not subject to any dispute, setoff or counterclaim;

9.1.5 except for any delayed delivery or advance deposit Transactions that are permitted by us or the Payment Card Network Rules, the good or service was actually delivered or provided to the Cardholder at the time of purchase;

9.1.6 you have no knowledge or notice of anything that would indicate that the Transaction was fraudulent or not authorized by the Cardholder, or that would otherwise impair the validity or collectability of the Cardholder's obligation arising from the Transaction;

9.1.7 you have obtained the Cardholder's consent to collect, use, disclose, store and otherwise handle the Cardholder's Data if required in accordance with Privacy Laws; and

9.1.8 the Transaction was made in accordance with this Agreement, applicable Payment Card Network Rules, Operating Standards and applicable law and would not damage the goodwill of a Payment Card Network, as determined in the sole discretion of the Payment Card Network.

9.2 Each time you submit a Routed Transaction to us for routing to the applicable Third Party(ies), you represent and warrant to us that such transaction was made in accordance with your agreement(s) with such Third Party(ies) and otherwise complies with any applicable terms of this Agreement.

10. DISPUTES AND REFUNDS

10.1 You will settle any claims or disputes between you and a Cardholder or any other person about goods or services or the amount of a Transaction directly with the Cardholder or other person.

10.2 You will settle any claims or disputes between you and a Cardholder, Third Party or any other person about goods or services or the amount of a Routed Transaction directly with the Cardholder, Third Party or other person.

10.3 If you have already received a credit from us for the amount of a Credit Card Transaction and the Transaction has not been charged back to your Account, you will make any refund or money adjustment payable to a Cardholder in respect of the Transaction by issuing a refund directly to the Cardholder. You must submit any such refund Transaction to us in accordance with Section 6.5.

10.4 If a Cardholder claims that the wrong amount of funds were debited to the Cardholder's account for a Debit Card Transaction, you will not provide any refund to the Cardholder and you will instruct the Cardholder to contact his or her financial institution to dispute the amount of the debit. You are liable for any attempts by you or your employees or agents to correct any incorrect debit, including without limitation a double debit of the Cardholder's account or a cash refund.

11. BANKING; SETTLEMENT OF TRANSACTIONS

11.1 You will maintain the Account for this Agreement with us at a TD branch, subject to an operation of account agreement. The Account may be changed only with our prior written approval.

11.2 Provided that your Account is with us, unless we refuse to credit your Account for a reason set out in Section 12 below:

11.2.1 for Transactions submitted before Cut-Over on a Business Day, we will generally post the Transaction as of the same Business Day and credit the face amount of the Transaction (including taxes if applicable) to your Account on the next Business Day; and

11.2.2 for Transactions submitted at or after Cut-Over or on non-Business Days, we will generally post the Transaction and credit the face amount of the Transaction (including taxes if applicable) to your Account on the next Business Day.

11.3 If you use Terminals or other services, including third party processing or banking services that are not provided by us or not connected to us, unless we refuse to credit your Account for a reason set out in Section 12 below, settlement of Transactions delivered electronically by you or your third party provider before Cut-Over will generally be provided the next Business Day or as soon as practicable thereafter, and settlement of Transactions submitted to us on or after Cut-Over will generally be provided within 2 Business Days or as soon as practicable thereafter.

12. REFUSALS AND CHARGEBACKS FOR TRANSACTIONS

12.1 Even if you have received an Authorization for a Transaction by or on behalf of the Card issuer, we may:

12.1.1 refuse to credit to your Account for any reason in our sole discretion,

12.1.2 deduct from any payment due to you the total amount of any Transaction, or

12.1.3 process a Chargeback to your Account for all or part of the amount of any Transaction in any circumstance permitted by the Payment Card Network Rules.

Some of the circumstances that commonly result in such refusals, deductions or Chargebacks are set out in Schedule D. Chargebacks are processed by TD pursuant to the processes set out by the Payment Card Networks. While TD may assist you in disputing a Chargeback in accordance with the Payment Card Network Rules, TD does not have control over Chargebacks and cannot reverse Chargebacks, which are resolved following processes set out by the Payment Card Networks.

12.2 You are responsible for all fees, discounts, refusals and Chargebacks resulting from unsigned, unimprinted, manually keyed or unauthorized Transactions. The amount of any Chargeback and the costs we incur in collecting and processing any Chargeback are amounts that you must pay to us on demand and that are subject to Section 15 of this Agreement.

12.3 We will advise you of any Transaction that we have refused to pay or have charged back to you. At our option, we may do so after we have already refused to pay or charged back the Transaction.

12.4 In the event of a Chargeback, you may pursue any available remedies against the Cardholder. We are not obligated to resolve any disputes arising between you and the Cardholder.

12.5 Except for the Transactions that we have refused to credit to you or which have been subject to a Chargeback, you must not receive payment in respect of a Transaction from any party except from us.

13. TERMINALS

13.1 When you use a Terminal to request Authorization of a Transaction, you will follow all instructions and abide by all responses communicated by means of a Terminal.

13.2 The provisions set out in Schedule E apply to Terminals used by you.

13.3 For Authorization procedures when using a Terminal; (i) those set out in this Agreement will apply to all Transactions; and (ii) those procedures of the applicable Third Party will apply to all Routed Transactions.

13.4 Your Terminal may be capable of running third party software applications ("**Third Party Applications**"), which may be installed for use on the Terminal. The provisions set out in Schedule F apply to the downloading of Third Party Applications on your Terminal, and your access to and use of Third Party Applications through your Terminal.

14. SECURITY

14.1 We have the right to require, at any time, that you provide security in a form and amount that is acceptable to us to secure the performance of your Payment Obligations and/or your Other Obligations.

14.1.1 We have the right to require, at any time during the Term, that you increase the amount of your security by an amount that is acceptable to us.

14.1.2 You grant to us a first priority security interest in your security and you agree to sign any documents that we may require to perfect and otherwise confirm our security interest.

14.1.3 If you do not provide the required security or increased security within five days of our request to you pursuant to Section 14.1, or immediately in the event of an allegation of fraud or termination pursuant to Section 18, we may withhold or suspend providing Merchant Services until you provide the security or increased security.

14.2 We have the right, at any time, to require that you fund a separate or comingled reserve account at TD in an amount that is acceptable to us to secure the performance of your Payment Obligations and/or your Other Obligations.

14.2.1 The reserve account may be funded by:

(a) direct payment by you (if you are requested to do so by us); and/or

(b) offsets by us against settlement amounts or other amounts that are due to you from us under this Agreement; and/or

(c) transfer by us into the reserve account of funds withdrawn from (i) your Account, or (ii) other accounts maintained by you with us, or (iii) other accounts maintained by you with another financial institution.

14.2.2 You grant to us a first priority security interest in your reserve account and you agree to sign any documents that we may require to perfect and otherwise confirm our security interest.

14.2.3 If you do not fund or increase the amount in your reserve account within five days of our request to you pursuant to Section 14.2, or immediately in the event of an allegation of fraud or termination pursuant to Section 18, we may withhold or suspend providing Merchant Services until you fund or increase the amount in the reserve account.

14.3 We have the right, at any time and without notice to you, including while we or a Payment Card Network complete an investigation with respect to your Merchant Account, to:

14.3.1 withhold settlement of Transactions; and/or

14.3.2 hold, retain or otherwise freeze funds in your Account or any other account you have with us,

in an amount sufficient to cover any Payment Obligations and/or your Other Obligations, as determined by us in our sole discretion.

15. FEES AND OTHER CHARGES

15.1 You agree to pay us fees as set out in the Fee Disclosure Box (Cost Per Transaction Disclosure) and Fee Schedule. We may at any time during the Term increase any fee listed in the Fee Disclosure Box or Fee Schedule, or add a new fee. If a Payment Card Network increases any existing, or introduces a new, PCNO Core Fee, Other PCNO Fee, or any other rate or fee payable by us, we may change our fees to reflect such increase or introduction. As required by the Code of Conduct, we will notify you between 30 and 60 calendar days prior to the effective date of any of the following changes:

(a) a new or increased Acquirer Fee that will be passed on to you in part or in full as a result of the changes described above;

(b) a new or increased applicable domestic PCNO Core Fee of which we have received notice from a Payment Card Network that will be passed on to you in part or in full; or

(c) a reduction in an applicable domestic PCNO Core Fee of which we have received notice from a Payment Card Network that will not be passed on to you in full (subject to the Code of Conduct requirements for blended/flat rate plans).

The fees set out in the Fee Disclosure Box (Cost Per Transaction Disclosure) and Fee Schedule do not include any additional taxes or other government levies that may apply and may change from time to time.

15.2 You agree to pay any Fine that we may impose, or any Fine imposed on you or us by any Payment Card Network, Third Party or otherwise with respect to your acts or omissions in connection with the processing of your Transactions or Routed Transactions. Any Fine will be an amount payable by you on demand under this Section.

15.3 Any fee, charge, adjustment, Fine, applicable taxes, and any amount of any Chargeback or any refund issued by you and any other amount that you owe to us under this Agreement, is an amount payable by you to us on demand.

15.4 **Set-off.** If you owe us any amounts under this Agreement we may, in our sole discretion and without notice to you, set-off these amounts from any amount that we owe you, debit your Account for these amounts or deduct these amounts from any other account that you have with us or any of our affiliated companies (which include any member of the Toronto-Dominion Bank Group). You will pay all of our legal expenses (including legal fees charged by our own internal legal counsel) that we incur to collect or attempt to collect any amount that you owe to us.

16. ACCOUNT STATEMENTS, ONLINE SERVICING PORTAL, TRANSACTION RECORDS AND EMPLOYEE LOGS

Account Statements.

16.1 Once each month we will issue you a statement of account setting out total dollar amounts settled by us and payments made or due to us. Your statement will be provided electronically. Should you require it, statements will be sent to you by mail upon request, and for a charge as set out in the Fee Schedule. You must notify us in writing of any errors or omissions in your statement within 60 days of the statement date.

16.2 We will investigate errors or omissions if we receive written notice from you within the above time period. If we do not receive written notice from you within such time period, then every item on your statement will be considered to be correct (subject to our rights under Section 16.3) and you may not afterwards make any claim against us about any error or omission in your statement.

16.3 All credits to your Account are subject to Chargebacks or other deductions, and to final audit by us. We may debit or credit your Account at any time to correct any error or omission.

Online Servicing Portal.

16.4 You must enroll for TD's Online Servicing Portal in order to access your statements and other Merchant Account information. You are responsible for the care and control of your user identification information, PINs, passwords and verification questions and answers ("**User Credentials**") associated with your use of the Online Servicing Portal. You will take such steps as are necessary or advisable in order to protect your User Credentials and to prevent unauthorized access to and use of the Online Servicing Portal. This includes:

16.4.1 avoiding the creation of User Credentials that may be easily determined by others such as your name, business name, phone number, address, etc.;

16.4.2 not disclosing your User Credentials voluntarily to anyone else at any time, other than your authorized employees, agents or representatives;

16.4.3 taking all reasonable precautions to ensure that any authorized employees, agents or representatives protect your User Credentials.

16.5 We may suspend, cancel or block your access to or use of the Online Servicing Portal] at any time and for any reason, without notice or liability to you.

16.6 You must notify us immediately if your User Credentials have become, or you suspect have become, known to an unauthorized person, or if a computer, mobile device or tablet that you use to access the Online Servicing Portal is, or you suspect is, lost or stolen, or has been compromised.

16.7 If you authorize any of your employees, agents or representatives to access the Online Servicing Portal using your User Credentials, you are responsible for ensuring that they comply with your obligations in respect of your use of the Online Servicing Portal, and you will be responsible for their actions.

Transaction Records.

16.8 You will ensure that any Transaction Record that you issue is legible.

16.9 You will keep all Transaction Records for a minimum of 24 months. We have the right to have access to and examine and copy your Transaction Records at any reasonable time and you agree to provide us with access to your Transaction Records when requested within five Business Days even after termination of this Agreement.

16.10 If you fail to provide us with a copy of any Transaction Record for a Transaction within the time that we request, that Transaction may be charged back in accordance with Section 12.

Employee Logs

16.11 You will maintain accurate logs of employee shifts and provide these logs (with or without employee names) to us within 24 hours of a request to do so as part of the investigation of a fraud incident.

17. BUNDLED WEBSTORE SERVICES

17.1 If you elect to receive the Bundled Webstore Services then the provisions set out in Schedule G apply to your access to, use and receipt of the Bundled Webstore Services.

18. TERM AND TERMINATION

18.1

(a) Unless terminated earlier for a reason set out in this Section, or unless specified otherwise in your Application or Information Summary Box (Summary of Key Elements of the Agreement), this Agreement will remain in full force and effect for an initial term of three years, starting on the Effective Date (the "**Initial Term**").

(b) The Agreement will automatically renew for additional renewal terms of six months unless either party gives written notice to the other that it does not intend to renew the Agreement. This notice must be given at least 45 days before the end of the current term (whether it is the Initial Term or a renewal term).

18.2 This Agreement, a Merchant Account or certain of the Merchant Services, may be terminated:

(a) by us at any time upon providing 10 days' notice to you;

(b) by us without notice to you in the following circumstances:

(i) you fail to comply with this Agreement;

(ii) you fail to maintain the minimum credit standard established by us for your Account from time to time, or we believe that a material adverse change has occurred in your creditworthiness, assets, business or financial condition including, without limitation, due to a change in your business;

(iii) you become insolvent or the subject of bankruptcy or insolvency proceedings, commit an act of bankruptcy, make any assignment for the benefit of your creditors, or a receiver is appointed for your business or any part of your property;

(iv) we determine, in our sole discretion, that any statement made by you to induce us to enter into this Agreement was false in any way when made, or becomes false;

(v) you are in default of any Payment Obligation under this Agreement or in default of paying any amount owing by you under any loan, debt or other obligation to us or anyone else;

(vi) you do not submit a Transaction or use any of the other Merchant Services for a period of twelve consecutive months;

(vii) you cease to carry on business;

(viii) we consider the number or amount of Chargebacks, potential Chargebacks, contingent Chargebacks or pending Chargebacks under this Agreement to be excessive or your Transactions to be irregular or any other circumstances that we consider, in our sole discretion, may increase our exposure to Chargebacks or otherwise present a financial or security risk to us;

(ix) any Transactions or Routed Transactions are irregular;

(x) you make a change to a Terminal described in Section 6 of Schedule E to this Agreement;

(xi) any act or omission by you may, in our sole discretion, create harm or loss of goodwill for us;

(xii) a Payment Card Network requires that we terminate this Agreement including, without limitation, because a merchant's act or omission may, in the Payment Card Network's sole discretion, create harm or loss of goodwill for the Payment Card Network;

(xiii) you or any Guarantor default in paying any creditor, including us; or

(xiv) you or a Guarantor fail to comply with any other agreement (including a security agreement) to which you or a Guarantor are a party.

18.3 We may, with or without notice to you, change or suspend any or all of the Merchant Services and/or suspend payments to you under this Agreement in any of the circumstances set out in Section 18.2(b), while we investigate the circumstances, or if we have made reasonable efforts to contact you regarding the Merchant Services or any other aspect of this Agreement in accordance with Section 22.8 but have not been able to reach you.

18.4 Our right to terminate this Agreement, a Merchant Account or any of the Merchant Services does not limit any of our other legal or equitable rights.

18.5 If this Agreement is terminated by us or you for any reason:

(a) all amounts payable by you under this Agreement will be immediately due and payable on demand;

(b) your right to accept Cards in accordance with this Agreement will immediately cease; and

(c) all equipment (including Terminals and imprinters) and other material bearing the name or Mark of us or any Payment Card Network or any representation of them will be returned to us immediately at your expense and risk and you will immediately discontinue all references to, uses of, or displays of all Marks or names, unless you are permitted to do so under another agreement.

18.6 If:

18.6.1 you terminate this Agreement or a Merchant Account without giving the required notice pursuant to Section 18.1; or

18.6.2 we terminate this Agreement or a Merchant Account pursuant to Section 18.2(b),

you agree to pay to us a Deactivation Fee as set out in the Fee Schedule.

18.7 You will not have to pay a Deactivation Fee if:

18.7.1 within 30 calendar days of the Effective Date, you:

(a) cease using all Merchant Services; and

(b) return all equipment (including Terminals and imprinters) and other material bearing the name or Mark of us or any Payment Card Network or any representation of them to us; or

18.7.2 you terminate the Agreement within 70 calendar days after the effective date of any of the following changes of which we have notified you:

(a) a new or increased Acquirer Fee that will be passed onto you in part or in full; or

(b) a new or increased applicable domestic PCNO Core Fee of which we have received notice from a Payment Card Network that will be passed onto you in part or in full

(c) a reduction in an applicable domestic PCNO Core Fee of which we have received notice from a Payment Card Network that will not be passed onto you in full (subject to the Code of Conduct requirements for blended/flat rate plans),

provided that any such change is not: (i) otherwise made in accordance with the Fee Schedule, including a change to a PCNO Core Fee that we pass through to you in accordance with an interchange-plus fee structure, if applicable; (ii) made by us at your request; or (iii) a tax or other government levy.

Final Settlement

18.8 Within 30 days of the date of termination of this Agreement, we will credit your Account with all settlement funds owing to you under this Agreement less a holdback equal to any outstanding, potential or anticipated fees, charges, adjustments, Fines, applicable taxes, Chargebacks and any other amounts which may be or become payable by you pursuant this Agreement after its termination. The holdback will be used to settle any such amounts that become due in the 180 days after termination, and the unused portion of the holdback will be credited to your Account following that 180-day period. If the holdback is insufficient to cover all outstanding amounts that become due in the 180 days after termination, you agree to pay us any deficiency, promptly on demand.

Survival

18.9 The provisions of Sections 12, 14, 15, 16.9, 16.10, 18.4, 18.5, 18.6, 18.7, 18.8, 18.9, 19, 20 and Schedule E will survive termination of this Agreement. All obligations of the parties in respect of any event which occurred prior to the date of termination of this Agreement will survive termination. After termination you will continue to be responsible for your Payment Obligations under this Agreement.

19. CONFIDENTIALITY AND DATA SECURITY

19.1 In this Section 19, the term "**Confidential Information**" means any business, financial, marketing, technical, scientific or other information of a party whether in written, oral, graphic, photographic, electronic or any other form, which, at the time of disclosure by that party to the

other party, is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgment, to be confidential.

19.2 Except as expressly authorized by prior written consent of the other party, or as provided in this Agreement, each party agrees to:

(a) limit access to any Confidential Information received by it to its employees and agents who have a need-to-know in connection with this Agreement;

(b) advise its employees and agents having access to the Confidential Information of the proprietary nature thereof and of the confidentiality obligations included in this Agreement;

(c) safeguard all Confidential Information received by it using a reasonable degree of care, but not less than that degree of care used by it in safeguarding its own similar information or material;

(d) use all Confidential Information received by it solely for purposes of performance of this Agreement; and

(e) not disclose any Confidential Information received by it to any third party except as required for purposes of performance of this Agreement.

19.3 The obligations of confidentiality and restriction on use do not apply to any Confidential Information which the recipient of Confidential Information can establish:

(a) was publicly available prior to the date of this Agreement or subsequently became publicly available through no fault of the recipient;

(b) was lawfully received by the recipient from a third party free of any obligation of confidence to the third party;

(c) was already in the possession of the recipient prior to the receipt thereof, directly or indirectly, from the disclosing party;

(d) is subsequently and independently developed by employees, consultants or agents of the recipient without reference to the Confidential Information disclosed under this Agreement;

(e) in the case of us, is disclosed by us to any third party, including without limitation referral partners, franchisors and group or association representatives, for the purpose of (i) managing our relationship with you, including arranging for the provision of services by third party software, platform and device providers; (ii) complying with our obligations to, or managing our relationship with, such third parties where you have been referred to TD by a referral partner or where you are a franchisee or a member of a group or association of merchants obtaining Merchant Services from TD; or (iii) enforcing a Payment Obligation or Other Obligation owed to us by you; or

(f) is required to be disclosed: (i) in response to a court order, search warrant or other demand or request which the recipient believes to be valid; or (ii) to meet requests for information from regulators, including self-regulatory organizations, or to satisfy applicable legal and regulatory requirements.

19.4 You will collect, use, disclose, store and otherwise handle Cardholder Data in accordance with Privacy Laws. Notwithstanding the generality of the foregoing, you:

19.4.1 will obtain the Cardholder's consent to collect, use, disclose, store and otherwise handle their Cardholder Data when required in accordance with Privacy Laws;

19.4.2 will not use, disclose, sell or provide access to Cardholder Data for any purpose other than for the sole purpose of assisting you in completing a Transaction or Routed Transaction, or as specifically required by law; and

19.4.3 acknowledge that to the extent we use, disclose, store or otherwise handle Cardholder Data pursuant to this Agreement, we are doing so as your service provider, pursuant to the consent you have obtained from the Cardholder.

19.5 Without limiting your obligations under Section 19.9 you will implement appropriate physical, technological and administrative security measures to protect Cardholder Data and other Transaction information from loss or theft, or unauthorized access, use or disclosure. You will take reasonable precautions to ensure that each Cardholder is adequately protected from the disclosure of Cardholder Data when a Card is tendered as payment for a Transaction or Routed Transaction. You will store all Transaction Records and any other materials in any form containing Cardholder Data and other Transaction information in a safe and secure manner, in an area where access is limited to selected personnel who require access in connection with their role. Any deletion or destruction of Transaction Records or Cardholder Data will be carried out in a secure manner that renders the deleted or destroyed data permanently unreadable.

19.6 You will allow us or a Payment Card Network to inspect your premises and computers for the purposes of verifying that Cardholder Data and other Transaction information is securely stored and processed in accordance with the requirements of this Section 19.

19.7 If you make arrangements with a third party for the collecting, processing or storing of Cardholder Data or other Transaction information, you will execute a written contract with the party that includes obligations regarding security and confidentiality of Cardholder Data and other Transaction information and the right to inspect the third party's premises and computers that are similar to those in this Section 19.

19.8 You will notify us immediately of any suspected or confirmed loss or theft of Cardholder Data or other Transaction information. You will ensure that any Electronic Commerce Facilities you use comply with applicable operating and security standards as set by us and Payment Card Networks so as to protect Cardholders from the unauthorized disclosure of information. When we notify you of a confirmed or suspected breach of data, we or the Payment Card Network, may require that the Electronic Commerce Facilities used by you be assessed by a qualified PCI Forensic Investigator (PFI) as chosen by you in order to conduct an investigation as to the cause. You will co-operate with the Payment Card Network and with us in any investigation of suspected or confirmed loss or theft of Cardholder Data or other Transaction information. All of the costs incurred by us under this Section 19.8 constitute an amount that you must pay us on demand and that is subject to Section 15 of this Agreement.

19.9 You will comply with the Payment Card Industry Data Security Standard ("**PCI DSS**") and, as applicable, the Secure Software Framework ("**PCI SSF**"), the Visa Account Information Security Program, the MasterCard Site Data Protection Program, the Discover Information and Security Compliance program, the UPI Account Information Security Program and the American Express Data Security Requirements, details of which are available at pcisecuritystandards.org, visa.com/cisp, mastercard.com/sdp, discovernetwork.com/en-us/business-resources/fraud-security/pci-rules-regulations/discover-information-security-compliance, www.unionpayintl.com/en/ and americanexpress.ca/dsr, respectively, all as may be updated or substituted from time to time.

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

(a) notify us in writing of any agent or third party provider that engages in, or proposes to engage in, the provision of payment related services and/or the storing, processing or transmitting of Cardholder Data on your behalf, regardless of the manner or duration of those activities; and

(b) ensure that all of your agents and third party providers are (i) registered with the applicable Payment Card Network; (ii) comply with all applicable data security standards, including the PCI DSS; and (iii) are bound by a written contract with you that requires them to process Cardholder Data in compliance with this Section 19.

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

20. DISCLAIMERS; INDEMNITIES; LIMITATION OF LIABILITY

20.1 Disclaimers.

20.1.1 THIS AGREEMENT IS A SERVICE AGREEMENT. TO THE EXTENT PERMITTED BY APPLICABLE LAW WE DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, COLLATERAL OR STATUTORY, AND WHETHER MADE TO YOU OR ANY OTHER PERSON, INCLUDING ANY WARRANTIES OR CONDITIONS REGARDING QUALITY, SUITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE OF ANY EQUIPMENT OR SERVICES PROVIDED BY US UNDER OR INCIDENTIAL TO THIS AGREEMENT.

20.1.2 We will not be responsible for any claims, suits, damages, losses, fines, penalties, assessments (including under PCI DSS), costs or expenses incurred directly or indirectly by you (unless resulting from our gross negligence or willful misconduct) resulting from:

(a) disputes between you and a Cardholder, a Third Party or any other person relating to the receipt, quality, price or satisfaction of goods or services furnished by you or any act or omission of you arising out of a Transaction, or Routed Transaction;

(b) the amount of any interchange fees paid by you and remitted to a Payment Card Network being incorrect, including as a result of the merchant category code (MCC) that we assign to you or the application of a Special Interchange Program;

(c) our routing of any Routed Transaction;

(d) the installation, operation, failure to operate, security or maintenance of a Terminal, Third Party Application, Electronic Commerce Facilities or other equipment or services;

(e) your use of a Third Party Application;

(f) your use of an Online Servicing Portal;

(g) your use of the Ecommerce Webstore;

(h) your enrolment in or adoption of a Payment Card Network service, including any security standard;

(i) breakdown of or interruption of services in communication services including any Online Servicing Portal;

(j) errors in messages transmitted through a Terminal, Electronic Commerce Facilities, Online Servicing Portal or other equipment or services;

(k) Transactions or Routed Transactions submitted electronically to us and data produced using information transmitted through a Terminal, Electronic Commerce Facilities or other equipment or services;

(l) any failure or delay in the performance of any of the Merchant Services;

(m) unauthorized or fraudulent use of or errors in the use of Terminals, Electronic Commerce Facilities, Terminal Access Numbers, the Online Servicing Portal or other equipment or services and any resulting unauthorized, fraudulent or erroneous Transactions or Routed Transactions; or

(n) your failure to receive any communications under Section 22.8.

20.1.3 We are not responsible for equipment or services provided by third parties, including, software vendors, Internet service providers, other providers of services in respect of Electronic Commerce Facilities, third party processors, providers of Terminals and other equipment and services. Any approval by us of any third party or certification of equipment or services provided by a third party is for our own purposes and is not a representation or warranty with respect to the third party or its equipment or services. You will not make any representation that we or a Payment Card Network endorse or certify a third party's equipment or services.

20.2 **Indemnities.**

20.2.1 You (for the purposes of this Agreement, an "**Indemnifying Merchant**") must protect, indemnify, and hold harmless TD and TD`s affiliated entities, and each of the directors, officers, employees and agents of TD and TD's affiliated entities, from any and all actual or threatened claims, demands, obligations, losses, costs, fines, assessments (including under PCI DSS), liabilities and/or expenses (including, without limitation, actual legal fees, costs of investigation, and disbursements) resulting from and/or arising in connection with any act or omission of any person, including without limitation any of the following:

(a) the Indemnifying Merchant, its affiliated entities, or any person associated with the Indemnifying Merchant or its affiliated entities (including, without limitation, such Indemnifying Merchant's directors, officers, employees and agents, and all direct and indirect parents, subsidiaries, and affiliates of the Indemnifying Merchant);

(b) any Cardholder in connection with any Merchant Services and/or any other of Indemnifying Merchant's business;

(c) any Payment Card Network (including, without limitation, any Payment Card Network agents, all direct and indirect parents, subsidiaries, and affiliates of any Payment Card Network);

(d) any Third Party, or any other of Indemnifying Merchant's suppliers, service providers, counterparties or other entities engaged by Indemnifying Merchant, whether directly or indirectly in relation to Indemnifying Merchant's business, whether in relation to Merchant Services or otherwise; or

(e) any governmental or regulatory authority having jurisdiction over any of the foregoing.

20.3 **Limitation of Liability.**

20.3.1 Our liability and the liability of any of our affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, for any breach of this Agreement or otherwise from any acts or omissions: (i) will in all circumstances be

limited to direct damages; and (ii) in no circumstances will we or our affiliates or any of our or their respective directors, officers, employees, agents or subcontractors, be liable under any legal or equitable theory (including tort, contract, strict liability and fundamental breach) for lost profits, lost revenues, lost business opportunities, loss of goodwill, exemplary, punitive, special, incidental, indirect or consequential damages, each of which the parties agree is excluded, regardless of whether such damages were foreseeable or whether any party or any entity has been advised of the possibility of such damages.

20.3.2 Despite anything in this Agreement to the contrary, our cumulative liability, and the liability of our affiliates or any of our or their respective directors, officers, employees, agents or subcontractors for all losses, claims, suits, breaches or damages for any cause whatsoever (including, but not limited to, those arising out of or related to this Agreement) will not exceed: (i) $50,000; or (ii) the amount of fees payable to us pursuant to this Agreement in the immediately preceding 12 months (net of interchange, Fines and any other fees imposed on us or you by a Payment Card Network or third party), whichever is less.

21. CONTACTING US

General Inquiries: If you have a general inquiry, problem or concern regarding your Merchant Services you may call us toll free at 1-800-363-1163. For a more detailed overview of our complaint process visit the TD Website at td.com/to-our-customers/resolving-your-problems/comments.jsp.

Code Complaints: If you wish to submit a complaint relating to our compliance with the Code of Conduct for the Credit and Debit Card Industry in Canada you may do so by visiting tdmerchantsolutions.com/codecomplaint.

Contacting the Financial Consumer Agency of Canada: If you have a complaint regarding a potential violation of a consumer protection law, a public commitment, or an industry code of conduct, you can contact the Financial Consumer Agency of Canada ("**FCAC**") in writing at: 5th Floor, Enterprise Building, 427 Laurier Ave. West, Ottawa, Ontario K1R 7Y2. The FCAC can also be contacted by telephone at 1-866-461-3222 (en français 1-866-461-2232) or through its website at https://www.canada.ca/en/financial-consumer-agency.html. Please note the FCAC does not become involved in matters of redress or compensation.

22. GENERAL PROVISIONS

22.1 **Use of Marks:** You are not permitted to use any of our Marks or any Payment Card Network Mark or any representation of them including in any advertising materials without our or the Payment Card Network's prior approval in writing (as applicable).

22.2 **Display:**

22.2.1 You agree to prominently display decals, signs, digital Marks or other digital assets provided or approved by us in your premises and promotional material and on any Approved Website, indicating that you accept Cards. You will not more prominently display acceptance of one Card than that of any other Card. You will submit for our prior approval any advertising or promotional materials that refer to us, any Card or any Payment Card Network. You will not make any representation that we or a Payment Card Network endorse your goods or services.

22.2.2 You must display all Payment Card Network Marks in accordance with the Payment Card Network Rules and any other standards or guidelines relating to Marks published from time to time by the applicable Payment Card Network.

22.3 **Amendment:** Subject to Section 15.1, we may amend this Agreement from time to time by providing 30 days' notice to you by sending you the amendment or by directing you to view, print

or download the amendment from our website or to contact us by telephone requesting that the amendment be mailed to you.

22.4 **Assignment:**

22.4.1 This Agreement will be binding upon the parties and their heirs, successors and assigns. However, you are not permitted to assign this Agreement or any obligations without our prior written approval. In the event you become a debtor in bankruptcy or become subject to restructuring or insolvency proceedings, this Agreement cannot be assumed or enforced and we will be excused from performance hereunder. We may transfer, sell or otherwise assign this Agreement, any portion of this Agreement, or any rights and obligations without your approval and without prior notice to you.

(a) Without limiting the generality of the foregoing, we may assign this Agreement to Fiserv Canada Ltd. ("**Fiserv Canada**"). If you have received separate notice of such assignment, then this subsection 22.4.1(a) applies to you, and we will continue to provide you with the Merchant Services on behalf of Fiserv Canada during a transition period, as explained in the notice. While certain communications and documents (including legal documents and agreements) provided to you during this transition period may include TD's name and logo, your Agreement will be with Fiserv Canada as of the date of assignment set out in the notice.

22.4.2 If you accept American Express Cards through the OptBlue Program and you become a High CV Merchant, you acknowledge and agree that we may assign the portion of your Agreement as it relates to your acceptance of American Express Cards directly to American Express following which you will have a direct acquiring relationship with American Express.

22.4.3 If we assign this Agreement we may disclose information about you and the individuals who are your principals to anyone to whom we assign or may assign this Agreement, our rights and obligations.

22.5 **Headings and Interpretation:** The headings to each part of this Agreement are added for convenience and do not change the meaning of any provision of this Agreement. The terms "include", "includes" and "including" when used in this Agreement mean, respectively, "include without limitation", "includes without limitation" and "including without limitation".

22.6 **Waiver:** Any waiver by us of any of the provisions of this Agreement must be made expressly and in writing and will not constitute a waiver of any other provision (whether similar or not), or a continuing waiver of that particular provision unless expressly provided by us in writing.

22.7 **Severability:** If it is found by a court that any portion of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected.

22.8 **Communications:**

22.8.1 In this Section, "**Communications**" means notices, statements and other communications made in connection with this Agreement, including communications we send to you regarding our fees and charges.

22.8.2 We may send Communications to you by any method that we consider appropriate, including through our Online Servicing Portal, regular mail, statement notice, fax, email, web, telephone or electronic delivery to your Terminal, in each case to the most recent address or other contact information that we have on record for you. If you have more than one principal, a Communication sent to any one principal will be considered communication to you and to all principals. For our mutual protection, we may record all telephone calls that relate to the services provided under this Agreement.

22.8.3 Any Communication that we send to you by regular mail, including statement notices, will be considered to have been received by you 5 calendar days after we mail it. Communications that we send to you by fax, Terminal message or any electronic method will be considered to have been received by you at the time of sending. You will be responsible for any Communications that we send to you even if you do not receive them or read them.

22.8.4 You must advise us immediately of any change of address or other information to keep our records current. We are not responsible for your failure to receive a Communication if we send it to the address, or in accordance with other contact information for you, appearing in our records. We may cease sending Communications to the address appearing in our records if the Communications are returned and it appears to us that the address is no longer valid. In such a circumstance, we will not be responsible for continuing to send Communications until you advise us of your current address, and we will not be responsible for any missed Communications prior to our records being updated.

22.8.5 You may send Communications to us or contact us for any reason regarding the Merchant Services by calling us at 1-800-363-1163 or writing to us at TD Merchant Services, P.O. Box 300, TD Centre, Toronto, Ontario M5K 1K6. Any Communication that you send to us will be considered delivered only once we have actually received it. For your protection, when you are sending us Communications, do not send confidential or personal information (e.g. Card number, account numbers, etc.) via email, as it is not a secure method of communication. If your request is urgent or requires disclosure of confidential or personal information for resolution, please call us.

22.9 **Language:** You hereby acknowledge and confirm that: (i) a French version of this agreement was presented, and (ii) this agreement and all related documents hereto be drafted in the English language at your express request. Vous reconnaissez et confirmez par les présentes que (i) la version française de la présente convention vous a été présentée, et (ii) la présente convention ainsi que tous documents s'y rattachant soient rédigés en langue anglaise à votre demande expresse.

22.10 **Governing Law.** The Agreement will be governed by and interpreted in accordance with the laws of the province of Ontario and the federal laws of Canada applicable in Ontario and, subject to Section 22.11, you agree to submit to the exclusive jurisdiction of the courts of the province of Ontario.

22.11 **Binding Arbitration**. Merchant agrees to resolve any claim that arises out of or results from this Agreement and involves American Express (directly, indirectly or through American Express's right to join such claim), by binding individual arbitration in the manner provided in the *American Express Program Merchant Guide* (available at americanexpress.ca/merchantguide).

22.12 **Entire Agreement:** This Agreement, together with any amendments to this Agreement that we have agreed to make in writing, is the complete agreement and, subject to Section 3.2 with respect to additional Merchant Accounts that we may create for you, replaces all prior communications, undertakings and agreements, written or oral, related to the subject matter of this Agreement.

22.13 **Providing Us With Information:** In connection with any periodic or other review by us of your relationship with us, you will provide us any financial information about you and any Guarantor that we request from you. The *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and Regulations and certain other laws apply to TD and may require us to request information from you from time to time to address reporting, record-keeping, client identification, sanctions screening and ongoing monitoring requirements. You agree to abide by and comply with all such requests.

22.14 **Incentive:** If we agree to pay a signing bonus, integration allowance, technology allowance or any other type of incentive (collectively, an "**Incentive**") in consideration of your entry into this Agreement, you agree to refund to us the entire amount of such Incentive, and/or otherwise reimburse us for our cost in providing you with such Incentive, if you are not in compliance with your exclusivity obligation under Section 4.1, or if this Agreement is terminated for any reason, including by us, during the Initial Term of the Agreement.

22.15 **Relationship of Parties:** It is understood and agreed that the relationship of the parties is that of independent contractors and nothing herein contained may be construed as constituting a partnership, joint venture or agency between us and you.

22.16 **Force Majeure:** Neither party will be liable for any loss or damage or for any delay or failure in performance due to acts beyond the control of such party whether or not such acts could reasonably be anticipated (including acts of God, legislative, judicial or regulatory acts of any provincial or federal government, court or regulatory authority, acts of any of our subcontractors or any third party providers of goods or services to us, labour disruptions, blackouts, embargoes), except that non-payment of amounts due under this Agreement will not be excused by this provision.

22.17 **Entering into Binding Agreement; Electronic Signature:** You may enter into this Agreement with us by way of verbal or written Application for Merchant Services. If you are applying in writing, this Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement. In the event that any signature is electronic or is delivered by facsimile transmission or by electronic means, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such signature was an original.

23. DEFINITIONS

In this Agreement:

(a) "**Account**" means the deposit account initially designated in your Application, and any other account that you have designated and we have approved, to be used for the purpose of settling Transactions and making payments due by you or us under this Agreement;

(b) "**Acquirer Fee**" means an amount paid or payable by you to us for the acceptance and/or processing of Transactions, excluding Other Acquirer Fees, PCNO Core Fees, and Other PCNO Fees;

(c) "**Agreement**" has the meaning set out in Section 1;

(d) "**American Express Card**" means any valid and unexpired (i) card, account access device, or payment device or service bearing an American Express or an American Express affiliate's licensed trademark issued by an entity (including American Express and American Express affiliates) authorized by American Express or an American Express affiliate to issue an American Express card and to engage in the card issuing business; or (ii) a unique identifying number that an issuer assigns to the card when it is issued;

(e) "**Application**" has the meaning set out in Section 1;

(f) "**Approved Website**" has the meaning set out in Section 1 of Schedule C;

(g) "**Authorization**" means approval by, or on behalf of:

(i) a Card issuer to validate a Transaction; or

(ii) a Third Party to validate a Routed Transaction or a gift card or loyalty transaction;

(h) "**Authorization Number**" means the number provided by us to you which confirms Authorization of the Transaction for which Authorization was requested;

(i) "**Authorization System**" means the communication links between the computers, and the computers themselves, which are operated by or for you and us, which are used, among other things, to communicate Authorization Numbers from us to you upon your request for Authorization;

(j) "**Batch**" means a single submission by you to us of a group of Transactions (sales and credits) for settlement;

(k) "**Batch Close**" means a Terminal function which submits all the accumulated Transactions processed through the Terminal to us or a Third Party;

(l) "**Bundled Webstore Services**" has the meaning set out in Schedule G;

(m) "**Business Day**" means any day, other than a Saturday, Sunday or statutory holiday observed in the Province of Ontario;

(n) "**Card**" means:

(i) a valid and unexpired Credit Card or a valid Debit Card in any and all forms or applications that may be made available by a Payment Card Network from time to time including, without limitation, card plastic and mobile;

(ii) that you have consented to accept in your Application or otherwise;

(o) "**Card Not Present Transaction**" means a Transaction conducted by telephone, by mail, by Internet or other medium in which the Cardholder, the Card used by the Cardholder for payment and/or the merchant are not present at the same physical premises;

(p) "**Card Present Transaction**" means a Transaction in which the Cardholder, the Card used by the Cardholder for payment and the merchant are all present at the same physical premises, including a Contactless Transaction;

(q) "**Cardholder**" means, as the context requires, a person who is issued or otherwise authorized to use a Credit Card, Debit Card, gift card or loyalty card;

(r) "**Cardholder Data**" means Cardholder name, Card number, Card expiry date, Cardholder PIN, Card Verification Value (CVV), Card Verification Value2 (CVV2) and any or other information about an identifiable Cardholder;

(s) "**Chargeback**" means our right to return a Credit Card Transaction and be reimbursed for the amount of the Transaction by you out of the Account or otherwise, as permitted by this Agreement and the Payment Card Network Rules;

(t) "**Code of Conduct**" means the Code of Conduct for the Payment Card Industry in Canada, as may be amended or replaced from time to time;

(u) "**Confidential Information**" has the meaning set out in Section 19.1;

(v) "**Contactless Transaction**" means a Transaction that is initiated at a Terminal that does not require the Card to be swiped or inserted into the Terminal;

(w) "**Credit Card**" means a valid and unexpired credit card that is made available by a Payment Card Network from time to time;

(x) "**Cut-Over**" means 12:00 a.m. Eastern Time, which time may be changed from time to time in our absolute discretion without notice to you;

(y) "**Deactivation Fee**" means the fee payable by merchant upon the termination of a Merchant Account or this Agreement without giving the required notice, which fee was previously referred to on the Fee Schedule as an "early termination fee";

(z) "**Debit Card**" means any valid debit card that is made available by us or a Third Party which can be used together with a PIN for Interac® debit Transactions or for debit card Transactions through the network of another Payment Card Network;

(aa) "**Discount**" has the meaning set out in Section 6.3.1;

(bb) "**Ecommerce Webstore**" means a web-based and mobile ecommerce solution for which you may operate an e-commerce store, including store design, catalog management, hosting, checkout, order management, reporting, and pre-integrations;

(cc) "**Effective Date**" has the meaning set out in Section 3.1 and, for Agreements entered into or renewed on or after March 1, 2017, is stated in your Information Summary Box (Summary of Key Elements of the Agreement);

(dd) "**Electronic Commerce Facilities**" means the computer software and hardware that enables the processing of Internet Transactions;

(ee) "**Fine**" means any fine, fee, non-compliance fee, penalty or other type of assessment, including those imposed by a Payment Card Network or under PCI DSS;

(ff) "**Floor Limit**" means the maximum amount that may be charged in any single Transaction when the Authorization System is Off-Line without obtaining Authorization from us. We must approve any Floor Limit greater than zero ($0) and any changes to your Floor Limit;

(gg) "**Guarantor**" means a guarantor of your obligations under this Agreement;

(hh) "**High CV Merchant**" means a merchant with either (i) greater than CAD $1,000,000 in Charge Volume in a rolling twelve (12) month period or (ii) greater than CAD $100,000 in Charge Volume in any three (3) consecutive months, provided that merchants in certain industry categories as determined by American Express will be considered High CV Merchants regardless of their Charge Volume. For clarification:

(i) "**Charge Volume**" means, with respect to each merchant, total transactions on American Express Cards less Chargebacks, credits owed by the merchant to American Express cardholders, and any other amounts owed to American Express by the merchant; and

(ii) if a merchant has multiple locations, outlets, websites or online networks ("**Establishments**"), the Charge Volume from all Establishments shall be summed together when determining whether the merchant has exceeded the thresholds above;

(ii) "**Incentive**" has the meaning set out in Section 22.14;

(jj) "**Initial Term**" has the meaning set out in Section 18.1(a);

(kk) "**Internet Transaction**" means a Card Not Present Transaction or a Routed Transaction conducted by a Cardholder via the Internet;

(ll) "**Mark**" means a name, logo, trade name, logotype, trade-mark, or service mark;

(mm) "**Merchant Account**" means an account with a unique merchant identification number created by TD in respect of a merchant upon acceptance by TD of a merchant's application for Merchant Services;

(nn) "**Merchant Services**" means: (i) the credit and debit card acquiring services that we provide to allow a merchant's customers to pay for goods and services by means of Cards, including authorizing Transactions, submitting Transactions for settlement and the clearing and settling of Transactions; (ii) the routing services that we provide to allow a merchant to accept and process Routed Transactions; (iii) the Online Servicing Portal; (iv) Third Party Applications; (v) ancillary services, including billing and reporting services, that we provide to merchants; and (vi) any other service that we may offer to a merchant and designate as a Merchant Service from time to time;

(oo) "**Merchant Solutions Website**" means our merchants' website which is available at tdmerchantsolutions.com or at any other address as we may notify you from time to time;

(pp) "**Off-Line**" means any situation in which you are unable to obtain a response to a request for an Authorization through the use of the Authorization System;

(qq) "**Online Servicing Portal**" means an online service that TD may make available to merchants to allow merchants to view or access information including Merchant Account details, Transaction history, fees and other amounts that become payable by the merchant to TD, and other non-reporting capabilities.

(rr) "**Operating Standards**" means the operating, certification and security standards and specifications of The Toronto-Dominion Bank, the Payment Card Networks, EMVCo LLC. and PCI Security Standards Council, LLC., collectively, as applicable;

(ss) "**OptBlue Program**" means an American Express program pursuant to which we may enable small business merchants to accept American Express Cards. For the purposes of this definition, a "small business merchant" is a merchant who is under the threshold of a High CV Merchant;

(tt) "Other Acquirer Fee" means any fee or other amount paid or payable by you to us:

(i) for optional Card processing services that we may provide to you; or

(ii) resulting from Card processing activities related to safety, soundness, or non-compliance with any terms of this Agreement, which could be avoided by your compliance with this Agreement;

(uu) "**Other Obligation**" means any obligation imposed on the merchant under this Agreement that is not a Payment Obligation;

(vv) "Other PCNO Fee" means any fee, fine, penalty (including any assessment under a PCI security standard) or other amount, paid or payable:

(i) for optional Card processing services provided by a Payment Card Network; or

(ii) resulting from Card processing activities related to safety, soundness, or non-compliance with any terms of an agreement with a Payment Card Network that can be avoided by complying with the Payment Card Network Rules;

(ww) "**Payment Card Network**" means Visa Canada Corporation, Visa Inc., Visa International Service Association, MasterCard International Incorporated, Discover Financial Services (Canada), Inc., UnionPay International Co., Ltd., Amex Bank of Canada, Interac Corp., other card organizations as we may advise and related associations, and their successors, assigns, subsidiaries and affiliates as applicable;

(xx) "**Payment Card Network Rules**" means the applicable operating rules and regulations of a Payment Card Network that are published and updated by a Payment Card Network from time to time, including without limitation those made available to merchant by us from time to time on the Merchant Solutions Website;

(yy) "**Payment Obligation**" includes any fees, charges, adjustments and applicable taxes which have been or may be incurred by you in respect of the Merchant Services, any Chargeback liability or potential, contingent or pending Chargeback liability, or any potential, pending or actual Fine which may be imposed on you or us by a Payment Card Network or otherwise as a result of your acts or omissions in connection with the processing of your Transactions or Routed Transactions;

(zz) "**PCI DSS**" means Payment Card Industry Data Security Standard;

(aaa) "**PCNO Core Fee**" means any amount set and/or charged by a Payment Card Network, paid or payable for the acceptance and/or processing of Transactions, and for the avoidance of doubt excluding Other PCNO Fees;

(bbb) "**Permitted Surcharge**" has the meaning set out in Section 6.3.2;

(ccc) "**PIN**" means a confidential personal identification number for sole use by the Cardholder in conjunction with the Cardholder's Credit Card or Debit Card to authenticate the Cardholder's instructions for Credit Card or Debit Card Transactions at a Terminal;

(ddd) "**Privacy Laws**" means the federal *Personal Information Protection and Electronic Documents Act* (Canada), as amended or supplemented from time to time, and any applicable legislation now in force or that may in the future come into force governing the protection of personal information in the private sector applicable to merchant or TD or to the activities contemplated under this Agreement;

(eee) "**Privacy Policy**" means our policy applicable to the collection, use and disclosure of personal information that may be provided to you from time to time, and that is available online at td.com, as may be updated from time to time;

(fff) "**Recurring Transaction**" means multiple Transactions processed at predetermined intervals not to exceed one year between Transactions, representing an agreement between you and a Cardholder to purchase goods or services over a period of time;

(ggg) "**Routed Transaction**" means:

(i) the purchase of goods or services using a Credit Card or Debit Card that is not a Card under this Agreement but that you accept for payment pursuant to an agreement with a Third Party, which we have agreed to route for you to the applicable Third Party through our communications network for settlement directly between you and such Third Party;

(ii) the purchase of goods or services using a stored-value card pursuant to a gift card program that you participate in pursuant to an agreement with one or more Third Parties, which we have agreed to route for you to the applicable Third Party through our communications network; or

(iii) the qualification for or redemption of rewards or discounts of any type pursuant to a loyalty program that you participate in pursuant to an agreement with one or more Third Parties, which we have agreed to route for you through our communications network; and

(iv) for the avoidance of doubt, a Routed Transaction can be conducted using Credit Cards, Debit Cards, gift cards or loyalty cards in any and all forms or applications that may be made available by a Third Party from time to time including, without limitation, paper, card plastic, mobile, electronic, single-use or reloadable, and includes card present or card-not-present transactions;

(hhh) "**Special Interchange Program**" means an interchange program offered from time to time by a Payment Card Network or Card issuer, which specifies interchange rates for eligible merchants. Eligibility requirements for such interchange programs are determined by the Payment Card Network or Card issuer. Special Interchange Programs include, but are not limited to, the Visa Industry Program, the Visa Canada Small Merchant Program, the Mastercard Qualified Small Businesses Interchange Program, and programs for registered charities and utilities;

(iii) "**Term**" means, unless we have agreed with you otherwise, the Initial Term plus any renewal term;

(jjj) "**Terms and Conditions**" has the meaning set out in Section 1;

(kkk) "**Terminal**" means equipment and/or point of sale software application(s) which we provide to you or agree may be used by you for the purpose of communicating with us respecting Transactions and Routed Transactions, including a PIN pad device incorporating an alphanumeric keyboard, to be used by the Cardholder for secure entry of his or her PIN;

(lll) "**Terminal Access Number**" means a confidential personal identification number also known as a supervisor/admin number issued by us for use by you to permit Debit Card Transaction refunds or reversals or to access other Terminal functionality from time to time;

(mmm) "**Third Party**" means:

(i) in the case of a Credit Card or Debit Card that is not a Card under this Agreement, a payment card network, other shareholder of Interac Corp. or other person with whom you have an agreement to accept such Credit Card or Debit Card; or

(ii) in the case of a gift card or loyalty program, the issuing financial institution, program manager and/or other third party provider with whom you have one or more agreements in place in order to accept gift cards and otherwise participate in the gift card and/or loyalty program;

(nnn) "**Third Party Application**" has the meaning set out in Section 13.4;

(ooo) "**Transaction**" means the sale of goods or provision of services by you in respect of which a Card was used for payment, or a refund of such payment, including Card Present Transactions and Card Not Present Transactions. For the avoidance of doubt, "Transaction" excludes Routed Transactions;

(ppp) "**Transaction Record**" means the printed form dispensed by the Terminal, or the electronic transaction record otherwise issued, upon completion of a Transaction which must include the following information:

(i) the number of the Card except that at least 4 digits of the Card must be suppressed or disguised on the Cardholder copy (except for an Interac debit Transaction);

(ii) your name and full address including city, province and country;

(iii) the date of the Transaction;

(iv) the amount of the Transaction in the currency of the Transaction;

(v) the Authorization Number obtained for the Transaction from the Terminal;

(vi) where required, the signature of the Cardholder obtained immediately after completion of the Transaction Record; and

(vii) the Transaction type (purchase or credit).

Where the Authorization System is Off-Line, the Transaction Record will be the sales draft that you create manually in a form that we approve;

(qqq) "**User Credentials**" has the meaning set out in Section 16.4.

Schedule A

Provisions For Card Present Transactions With PIN

1. If a Card Present Transaction is processed using a PIN, the following provisions apply:

   (a) for each Transaction, you will act on the instructions displayed by the Terminal and agree to instruct the Cardholder as to the use of the Terminal for entering and verifying Transaction details and for entering the Cardholder's PIN,

   (b) you will inform Cardholders, as required, that a Transaction requires the Cardholder to authenticate the Transaction using an authorized Card and entry of the correct PIN,

   (c) the PIN entered by the Cardholder will be verified at the time of the Transaction. If an incorrect or unauthorized PIN is entered, the Terminal will indicate a message that the PIN is incorrect or unauthorized. The Cardholder must be permitted 3 consecutive attempts to enter the correct PIN for one Transaction. You may decline a Transaction after any 3 consecutive PIN entry failures,

   (d) you will deliver to the Cardholder a copy of the Transaction Record printed by the Terminal or sent electronically,

   (e) the Cardholder's PIN is confidential to the Cardholder. You will not request or require that the Cardholder disclose in any manner his or her PIN to you or any person, and

   (f) you will ensure that each Cardholder is adequately protected against disclosure of his or her PIN during entry into the Terminal. The Terminal must be situated in such a manner as to minimize the potential for disclosure of the PIN during entry by the Cardholder into the Terminal. A prompt asking Cardholders to enter a PIN must not be inserted into the Terminal other than at the appropriate point that we require.

Schedule B

Provisions For Card Present Transactions Without PIN

1. If your Terminal does not function or if the Authorization System is Off-Line, you will follow these additional procedures for all Credit Cards and Debit Cards other than UnionPay Cards and Debit Cards used for Interac debit Transactions:

   (a) you will call us for telephone Authorization of all Transactions which exceed the Off-Line Floor Limit;

   (b) you will accept only unexpired Cards;

   (c) you will obtain a manual imprint from your imprinter of the Card on a sales draft that includes:

      (1) the number of the Card;

      (2) the expiry date of the Card;

      (3) the Cardholder's name;

      (4) your name and full address including city, province and country;

      (5) the date of the Transaction;

      (6) the amount of the Transaction in the currency of the Transaction;

      (7) the Authorization Number obtained from us by telephone for the Transaction;

      (8) the signature of the Cardholder obtained immediately on the manual imprint of the Card on the sales draft;

      (9) the Transaction type (purchase or credit);

      (10) your name and number from the merchant plate affixed to your imprinter; and

   (d) once the Terminal is connected to the Authorization System, you will enter the Transaction into the Terminal as a "force post" Transaction in accordance with any procedures that we provide to you.

2. You will not, in any circumstances, accept a UnionPay Card or a Debit Card used for Interac debit Transaction if your Authorization System is Off-Line, but you may request another form of payment from the Cardholder.

3. You agree that unless we agree otherwise, your Floor Limit is zero ($0) when our system is Off-Line. If the Authorization System is Off-Line, you must obtain an Authorization for all Transactions above the Floor Limit by phoning us and recording the Authorization Number on the sales draft. If the agreed upon Floor Limit is in excess of those identified in the Payment Card Network Rules, you agree to assume the risk for losses arising out of any decision by you to use a Floor Limit in excess of those identified in the Payment Card Network Rules.

4. If the Card cannot be swiped (for example, if the card is demagnetized), you will follow these additional procedures:

   (a) you will accurately key the Transaction into the Terminal in accordance with any procedures that we provide to you;

   (b) you will accept only unexpired Cards; and

   (c) you will obtain from your imprinter a manual imprint of the Card on a sales draft that includes:

      (1) the number of the Card;

      (2) the expiry date of the Card;

      (3) the Cardholder's name;

(4) your name and full address including city, province and country;

(5) the date of the Transaction;

(6) the amount of the Transaction in the currency of the Transaction;

(7) the Authorization Number obtained for the Transaction from the Terminal;

(8) the signature of the Cardholder obtained immediately on the manual imprint of the Card on the sales draft; and

(9) the Transaction type (purchase or credit);

5. If the Card presented by the Cardholder is not embossed and a manual imprint of such Card cannot be obtained, the Transaction must be processed electronically. If such processing is not possible, you may not process the Transaction unless the Cardholder provides another form of payment.

6. If your printer does not function but the Terminal and Authorization System are functioning and the Card can be swiped, in accordance with (1) above, you will obtain from the merchant plate a manual imprint of the Card on a sales draft that includes:

(a) the number of the Card;

(b) the expiry date of the Card;

(c) the Cardholder's name;

(d) your name and full address including city, province and country;

(e) the date of the Transaction;

(f) the amount of the Transaction in the currency of the Transaction;

(g) the Authorization Number obtained for the Transaction from the Terminal;

(h) the signature of the Cardholder obtained immediately on the manual imprint of the Card on the sales draft; and

(i) the Transaction type (purchase or credit).

7. Information not visible on the Card and encoded on the magnetic stripe of the Card will not be disclosed to you at any time and you will not attempt to access or use such information for any reason other than completing a Transaction.

8. For non-PIN Transactions, each Transaction Record must be signed by the person presenting the Card in your presence or the presence of your employee or agent. The signature must reasonably appear to be similar to the signature on the signature panel of the Card.

Schedule C

Internet Transactions

1. If we approve the acceptance of Internet Transactions, the approval will only apply to one or more specific websites, mobile applications or other digital platforms (each, an "**Approved Website**") and Internet service provider. Accepting Transactions through any website, mobile application or digital platform other than an Approved Website or new Internet service provider requires our prior written approval. You authorize us and will obtain the authorization of your Internet service provider for us to conduct security assessment scans of any Approved Website and server(s) over the Internet.

2. You will not display on an Approved Website, or be hyperlinked to a website, mobile application or other digital platform that sells or displays, any goods or services or any type of business that we or a Payment Card Network deem unacceptable, including those set out in Section 6.4.7 of the Terms and Conditions. You will not accept Cards for the provision of website hosting services.

3. You will be responsible to ensure that the Electronic Commerce Facilities operate securely in accordance with a Payment Card Network-approved method to protect Cardholders from the unauthorized disclosure of information with respect to Cards. You will ensure that the Electronic Commerce Facilities comply with the Operating Standards as set by us and Payment Card Networks from time to time. We may require from time to time that the Electronic Commerce Facilities be assessed, at your expense, by us, by a Payment Card Network and/or by another third party chosen by us in order to verify compliance with the Operating Standards. You will fully co-operate with any such assessment and be responsible for all costs associated with implementing or maintaining compliance of the Electronic Commerce Facilities with the Operating Standards.

4. If at any time the operating or security standards of the Electronic Commerce Facilities do not comply with the Operating Standards, you will, at our direction, immediately suspend accepting Internet Transactions until such time as we permit re-activation.

5. Any Approved Website must contain, at a minimum, the following information:

   (a) your legal name and any other name(s) under which you are carrying on business;

   (b) the address of your principal place of business;

   (c) customer service contact information;

   (d) complete description of goods and services you offer;

   (e) any geographic limitations for the sale of goods and services and any export restrictions if applicable;

   (f) Transaction currency;

   (g) applicable Card delivery policy, including method of delivery;

   (h) return, exchange and refund policies;

   (i) privacy policy governing the collection, use, disclosure and storage of customer personal information, including Cardholder Data;

   (j) security capabilities and policy for transmission of Card details;

   (k) applicable acceptance Marks, in full colour, to indicate acceptance of each Card you accept under the Agreement in accordance with the brand guidelines established and made available by the relevant Payment Card Network;

   (l) complaint handling procedures;

   (m) details of any applicable warranties or guarantees;

(n) the total consideration payable for the goods and services;

(o) an updated and accurate itemized list of the price of goods and services to be sold to the Cardholder as well as any shipping, delivery or handling charges, taxes, custom duties, broker fees or insurance costs;

(p) the terms, conditions and method of payment;

(q) the date when the goods will be delivered or the services are to be commenced;

(r) for Recurring Transactions, a simple and easily accessible online cancellation procedure; and

(s) any other information or disclosure that we require or that is required by law from time to time in any jurisdiction in which you offer goods or services.

6. The Transaction Record for an Internet Transaction must include:

(a) merchant name;

(b) merchant online address;

(c) Transaction amount (or credit), indicated in Transaction currency;

(d) Transaction date (or credit preparation date);

(e) unique Transaction identification number;

(f) purchaser name;

(g) Authorization Number;

(h) Transaction type (purchase or credit);

(i) description of merchandise/services;

(j) date of each individual purchase (for aggregated Transactions only);

(k) amount of each individual purchase (for aggregated Transactions only); and

(l) return/refund policy (if restricted).

Note: Do not include the Card number on the Transaction Record.

Schedule D

Refusals and Chargebacks

The following are examples of circumstances that commonly result in us refusing to credit your Account, deducting amounts due to you from the total amount of any Transaction, or in Chargebacks after we have already credited your Account. These are provided for the merchant's reference and this is not an exhaustive list.

1. We determine, in our sole discretion, that any of the Transaction Representations and Warranties listed in Section 9 of the Terms and Conditions is not true at the time that you submit a Transaction.
2. A Transaction is completed when the Authorization System is Off-Line, and the Transaction Record refers to a Card that expired prior to the Transaction date.
3. The Transaction Record is not properly completed.
4. The merchant completed the Transaction after we declined the merchant's request for Authorization of the Transaction or after we notified the merchant not to honour the Card.
5. The Transaction Record bears a signature that does not reasonably appear to be similar to the signature on the Card signature panel, or does not bear a signature at all where one was required.
6. The Cardholder claims that the goods or services referred to in the Transaction Record have not been received, are not as described, are defective, are unsatisfactory or were returned and that you failed to provide a refund to the Cardholder's Card.
7. The Cardholder has disputed the authorization, authenticity, legality or validity of any Transaction or part of a Transaction or Transaction Record.
8. We have credited the Account more than once for the same Transaction.
9. The merchant has done something prohibited by this Agreement or has failed to do something required by this Agreement.
10. The merchant or the merchant's employees or agents have defrauded or attempted to defraud TD.
11. A copy of the Transaction Record was requested for submission to the issuer of the Card but was not provided by the merchant within the time requested or required by the applicable Payment Card Network Rules.
12. A Transaction Record is altered by the merchant without the Cardholder's permission.
13. Any other circumstance in which TD or a Payment Card Network in good faith determines it appropriate to refuse the Transaction, reduce the payment owing to you or make the Chargeback.

Schedule E

Terminal Provisions

1. If we supply you with a Terminal the following provisions apply in respect of your Terminal:

   (a) each Terminal that we have supplied to you remains our exclusive property even when it is attached to any building. Each Terminal, other than a mobile Terminal that needs to connect to your smartphone in order to function, may only be moved with our prior written consent and at your expense. You will provide us with a complete address of any new location. You will keep each Terminal free and clear of all security interests, privileges, liens, encumbrances and other charges. All programs and software associated with the Terminals are confidential and you will not copy or disclose them to any other person;

   (b) each Terminal will be installed and operated in accordance with the instructions that we provide, and you must keep all Terminals up to date in respect of applicable software updates, certifications and compliance with Payment Card Network Rules and Operating Standards or otherwise as we may instruct you from time to time. Without limiting the foregoing, you agree to cooperate with us to facilitate the repair, replacement or updating of any Terminal from time to time as we may direct. We will have the right to conduct certification testing from time to time to ensure that all Terminals are up to date. You will provide all necessary network connections, electrical connections and outlets at your own expense;

   (c) you will promptly report any errors, malfunctions or other problems with the Terminals to us in accordance with problem reporting procedures established by us from time to time;

   (d) you are responsible, and will reimburse us, for any loss (including theft) of, or damage to, any Terminal which we supplied, from any cause whatsoever, other than ordinary wear and tear. We may debit the Account without notice to you for any cost that we incur in replacing lost, stolen or damaged equipment;

   (e) subject to your compliance with this Section, we will make reasonable efforts to maintain and correct malfunctions of the Terminals that we provide; and

   (f) if applicable, you will allow our employees and agents to have access to your premises as required for site preparation, installation and maintenance activities during your normal business hours. If access to your premises is required outside of your normal business hours, we will obtain your prior consent, which you may not unreasonably withhold. You will have your personnel present when our employees and agents are on your premises.

2. You are responsible for all costs of telecommunication lines, electricity and other charges related to data line or communications services.

3. You will ensure that the installation of Terminals on your premises complies with and will not violate or conflict with any federal, provincial or municipal law or regulation or any regulation of any regulatory body applicable to such installation. You will obtain all consents, authorizations and approvals of any governmental authority or any regulatory body which may be required in connection with such installation.

4. You will take reasonable care to secure and protect Terminals including by appropriately instructing any of your personnel who are permitted access to any Terminal.

5. You will pay us fees for any training provided to you or your personnel in the use of Terminals. If applicable, we may offer initial training for the use of Terminals at no cost. However, you will pay fees for any additional training that we provide and you will be responsible for all of your own out-of-pocket expenses including without limitation the cost of transporting your personnel to the applicable training location.

6. You will not make any changes to Terminals, equipment, point of sale software applications, telecommunications, Transaction Record printing and formatting functions or your Terminal provider, or make any change that otherwise impacts Transactions, without our prior written approval. You will not use Terminals that are not provided by us for the purpose of communicating with us or to obtain services from us in relation to Cards, or use Terminals provided by us but also use other equipment and/or point of sale software applications or processing services without our prior written approval. We may, in our sole discretion, not approve such changes or use of Terminals and other equipment and services not provided by us. If we do approve the change or use of Terminals and other equipment, point of sale software applications and services not provided by us, the following provisions apply:

   (a) you will be responsible for all expenses associated with the care, use, maintenance, upgrades, compliance, security and replacement of Terminals, and we will not be liable for any losses you incur arising out of your use, of such Terminals equipment and point of sale software applications;

   (b) we will have the right to conduct certification testing at your expense, and our prior written approval of your use of such Terminals equipment, point of sale software applications and your Terminal provider is required;

   (c) Terminals must have physical attributes such as privacy shields, privacy screens or be hand held, to provide a Cardholder with protection from having their PIN observed during entry of the PIN by the Cardholder;

   (d) you will allow us to inspect and confirm compliance of such Terminals, equipment and point of sale software applications with our own and Payment Card Network standards; and

   (e) we are not responsible for providing any reporting services, dealing with reconciliation problems or providing records of authorization requests.

7. You will permit us, the Payment Card Networks or their agents, to verify the compliance of your Credit Card and Debit Card processing infrastructure with the Operating Standards and you will be fully responsible for all the costs of verification of your compliance.

8. You acknowledge that Terminals and Terminal Access Numbers may permit debits to your Account. You will take such steps as are necessary or advisable in order to prevent unauthorized uses of Terminals and Terminal Access Numbers, including such steps as are necessary or advisable to prevent unauthorized disclosure of the Terminal Access Numbers. You will be liable for any unauthorized use of any Terminals and Terminal Access Numbers. We have no obligation to offer you Terminal Access Numbers or any other security functionality.

9. Terminal Access Numbers are confidential identification numbers that may be issued by us to you for the sole purposes of permitting you to effect refunds or Transaction reversals pursuant to a sale by you to a Cardholder, complete a Batch Close and perform other sensitive functionality. You acknowledge that a Terminal has the capability for transactions and services other than those contemplated by this Agreement by communicating with other computer equipment, persons or institutions, and you further acknowledge that we are not liable for any loss, damage, expense or claim resulting from the processing or non-processing of any such transactions or provision of any such services using a Terminal.

10. You will notify us immediately upon discovering any loss (including theft) or damage to or unauthorized use of a Terminal and Terminal Access Numbers, or if any seal in relation to a Terminal is removed or tampered with. You will advise us immediately upon any error occurring for any Card or Transaction. A copy of the Transaction Record for the relevant Transaction must be provided to us for each Transaction being investigated.

Schedule F

Third Party Software Applications

1. TD may in its sole discretion make certain Third Party Applications available to you from time to time through your Terminal ("**Third Party Application Access**"). Third Party Application Access is a Merchant Service under the Agreement. By accessing, downloading, or using any Third Party Application through your Terminal, you confirm that you will access Third Party Applications according to the terms of this Schedule and the Agreement.

2. You must not:

   (i) provide, deliver or preserve any malicious code through a Third Party Application ("**malicious code**" means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs, including code that is intended to or has the effect of misappropriating, commandeering, or disrupting access to or use or operation of any information, device, or system);

   (ii) commit any other act or omission in the course of accessing, downloading or using a Third Party Application that would cause you to be in breach of the Agreement, including without limitation as they relate to your Terminal; or

   (iii) violate any agreements, conditions or terms of usage imposed by any Third Party Provider in connection with any Third Party Application,

   (each of the above is called a "**Prohibited Activity**").

   You must cooperate with TD to detect, limit, prevent, and prohibit Prohibited Activity by your directors, officers, employees and agents, and by third parties. TD may at any time, without notice to you, enhance, modify, alter, suspend or permanently discontinue all or any part of the Third Party Application Access or one or more of the Third Party Applications that are available.

3. Third Party Applications are offered by third party providers ("**Third Party Providers**") and are subject to the Third Party Provider terms and conditions. TD is not responsible for any Third Party Application. Any content, data, publication or other information made available through a Terminal in connection with a Third Party Application is provided by the Third Party Provider and not TD, and provided on an as-is basis for your benefit, convenience and information. TD DISCLAIMS ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, THAT ANY SUCH CONTENT, DATA, PUBLICATION OR OTHER INFORMATION IS ACCURATE OR COMPLETE.

4. The fact that a Third Party Application is accessible through your Terminal does not mean that TD sponsors, endorses or is affiliated with the Third Party Application or the Third Party Provider. TD makes no representation or warranty concerning the Third Party Application. Access and use of any Third Party Application is at your own risk.

5. Notwithstanding anything else in the Agreement, to the maximum extent permitted by applicable law, TD waives any responsibility for any loss, and shall in no event be liable for any damages of any nature whatsoever, including direct, indirect, special or consequential damages, which may arise from or in connection with your access to or use of a Third Party Application through a Terminal, including the presence of a virus or of any other items of a destructive nature, or reliance on information contained in a Third Party Application.

6. You will settle any claims or disputes regarding a Third Party Application directly with the applicable Third Party Provider. You expressly acknowledge and agree that TD, and TD's affiliated entities, and each of the directors, officers, employees and agents of TD and TD's affiliated entities cannot in any way be prosecuted, sued or otherwise pursued for losses, claims, damages or injuries claimed from or incurred by you as a result of using a Third Party Application.

Schedule G

Bundled Webstore Services

TD has collaborated with BigCommerce (as defined below) to provide you with a convenient way to access and use an Ecommerce Webstore that is integrated with TD's Card acquiring services (the "**Integrated Merchant Services**"). TD's bundled offering that includes the Ecommerce Webstore will consist of the following (collectively, the "**Bundled Webstore Services**"): (1) a subscription to the Ecommerce Webstore, which subscription will allow you to access and use the Ecommerce Webstore; and (2) the Integrated Merchant Services. This Schedule G sets out the terms and conditions that will govern your access to, use and receipt of the Bundled Webstore Services, which terms and conditions are in addition to any other applicable terms and conditions of this Agreement (including, for greater certainty, those that apply to the Integrated Merchant Services). The Bundled Webstore Services are a Merchant Service under the Agreement.

1. Although TD is providing you with a subscription to the Ecommerce Webstore as part of the Bundled Webstore Services, and you are paying TD for such subscription, you understand and agree that the Ecommerce Webstore will be provided to you by BigCommerce Inc., or such other entity as set out in the BigCommerce Terms (defined below) ("**BigCommerce**"), and not TD. As such, your access and use of the Ecommerce Webstore will be subject to BigCommerce's Terms of Service located at www.bigcommerce.com/TDBank-Merchant-TOS ("**BigCommerce Terms**"). The BigCommerce Terms will be legally binding and are entered into between you and BigCommerce.

2. BigCommerce assumes all liability and responsibility related to your access and use of the Ecommerce Webstore as set out in the BigCommerce Terms, including for all features and functionalities of the Ecommerce Webstore and the provision of customer support for the Ecommerce Webstore. You will settle any claims or disputes regarding the Ecommerce Webstore directly with BigCommerce. You expressly acknowledge and agree that TD, and TD's affiliated entities, and each of the directors, officers, employees and agents of TD and TD's affiliated entities cannot in any way be prosecuted, sued or otherwise pursued for losses, claims, damages or injuries claimed from or incurred by you as a result of using the Ecommerce Webstore.

3. TD makes no representations or warranties concerning the Ecommerce Webstore, including with respect to any forums, blogs, private messages, emails, or other electronic discussion mediums made available through or in connection with the Ecommerce Webstore. Your use of the Ecommerce Webstore and your use of or reliance on any such information or materials made available through the Ecommerce Webstore is at your own risk.

4. Notwithstanding anything else in this Agreement, to the maximum extent permitted by applicable law, TD waives any responsibility for any loss, and shall in no event be liable for any damages of any nature whatsoever, including direct, indirect, special or consequential damages, which may arise from or in connection with your access to or use of the Ecommerce Webstore, including the presence of a virus or of any other items of a destructive nature, or reliance on any information obtained from or contained in the Ecommerce Webstore.

5. TD may at any time, without notice to you, enhance, modify, alter, suspend or permanently discontinue all or any part of the Bundled Webstore Services provided by TD or require BigCommerce to enhance, modify, alter, suspend or permanently discontinue all or any part of the Ecommerce Webstore.

6. The reference to or availability of any third party products, including those provided by BigCommerce, in connection with the Ecommerce Webstore does not constitute, and will not be construed as constituting, an endorsement, authorization, sponsorship, or affiliate by or with us with respect to such third party products. We assume no liability or responsibility to you relating to your access or use of any such third party products.

7. In addition to the termination rights set out in this Agreement**,** we may terminate your access to and use of all or any part of the Bundled Webstore Services under this Agreement without notice to you if: (a) TD's agreement with BigCommerce is terminated; (b) your agreement with BigCommerce is terminated; or (c) TD is not processing all Card Not Present Transactions for your Internet Transactions.

8. You acknowledge and agree that we may disclose to or share with BigCommerce any data that you may provide to us or which we collect from you, excluding Cardholder Data. Any such data disclosed to or shared with BigCommerce will be collected, stored, used, disclosed, and processed by BigCommerce in accordance with the BigCommerce Terms. You further acknowledge and agree that we will not be liable or responsible to you in any way for BigCommerce's collection, storage, use, disclosure, or processing of such data.

9. You acknowledge and agree that we may collect, store, use, disclose, and process any data related to you, or your access or use of the Ecommerce Webstore, provided to us by BigCommerce for the purposes of providing you with the Merchant Services, including the Bundled Webstore Services.

10. As set out in the Fee Schedule, your subscription to the Ecommerce Webstore is made available to you by TD through various tier-based packages. You will be automatically upgraded to the next tiered package if your rolling 12-month value of online sales on the Ecommerce Webstore meets or exceeds the United States dollar value threshold for each package listed in the Fee Schedule. The amount of your United States dollar value of online sales on the Ecommerce Webstore will be determined by BigCommerce in its sole discretion, including any exchange rate calculations if you transact on the Ecommerce Webstore in Canadian dollars. You may view the total United States dollar value of your online sales on the merchant dashboard made available to you by BigCommerce as part of the Ecommerce Webstore.

11. As your subscription is upgraded to the next package, your monthly fees for your subscription to the Ecommerce Webstore will increase as set out in the Fee Schedule. If you get upgraded from the Standard package to the Plus package or the Plus package to the Pro package, you may receive access to additional features or functionalities as part of the Ecommerce Webstore provided by BigCommerce.

12. If your rolling 12-month value of online sales on the Ecommerce Webstore falls below the United States dollar value threshold, as determined by BigCommerce, for a package listed in the Fee Schedule, then you may request TD to downgrade your package to a lower tier.