



## MONERIS GO RETAIL POS TERMS AND CONDITIONS SCHEDULE

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This Moneris Go Retail POS Terms and Conditions Schedule (this **“Schedule”**) to your Moneris Merchant Agreement (the **“Merchant Agreement”**) contains additional terms and conditions that apply if we provide the Moneris Go Retail POS Service (as defined below) to you.

Capitalized terms used and not defined herein will have the respective meanings given to such terms in the Merchant Agreement. Please ensure that you read carefully this Schedule, as your acceptance of its terms and conditions occurs when you enter into the Merchant Agreement, or, if earlier, upon your first use or access of the Moneris Go Retail POS Service. For greater certainty, this Schedule is part of the Merchant Agreement and remains subject to all of the other applicable terms and conditions of the Merchant Agreement. To the extent of any inconsistency between the terms and conditions of this Schedule and any other provision of the Merchant Agreement, the terms and conditions of this Schedule will govern with respect to the Moneris Go Retail POS Service and the subject matter of this Schedule. We can change this Schedule at any time by giving you notice in accordance with the Merchant Agreement. Your continued use of the Moneris Go Retail POS Service after such notification constitutes acceptance of any amendment, restatement, supplement or any other modification to this Schedule.

Moneris Go Retail POS may be made available to you by Moneris in connection with other Moneris solutions or components, which may be subject to separate terms and conditions. It is your responsibility to ensure you are aware of and comply with the terms and conditions associated with such Moneris solutions or components.

### 1. Definitions

- a. **“Application”** means the Moneris Go Retail POS Service functionalities and software application which may include an in-store and e-commerce inventory, order, image and description management features, virtual shopping cart functionality which can be integrated with your website or online store, and all of the Content and any other information, material, services and solutions made available on or in connection with such functionalities and application, and includes all modifications, updates and upgrades that we make available to you from time to time.
- b. **“Authorized Device”** means the device, computer, tablet, mobile phone, or other hardware, including PIN pad devices and terminals and virtual payment processing solutions, through which you access the Application, and which meets the technical and security specifications which we may require from time to time.
- c. **"Claims"** means any and all claims, demands, liabilities, damages, losses, suits, actions, investigations, proceedings or causes of action and any and all related costs and expenses, including without limitation reasonable legal fees and expenses.
- d. **"Content"** means all software, materials, reports, documentation, graphics, images, designs, plans, information and other content accessed by you on the Application or otherwise accessible through the Application, other than User Content and Merchant Data.

- e. **“Merchant Data”** means any data or information that you or your Users enter into the Application, including, without limitation, information about your products, inventory, shipping methods, customers or clients and about your Users, which may, for certainty, include Personal Information.
- f. **“Moneris Go Retail POS Service”** means collectively the Application and any related Moneris Go Retail POS hardware, software or services that we make available to you.
- g. **“Personal Information”** means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.
- h. **“Representatives”** means employees, officers, directors and affiliates of a party.
- i. **“Third Party Services”** means any and all products, applications, software, services, networks, systems, websites (including website creation and hosting services) provided by any third party to which the Application may link or enable a connection or integration.
- j. **“Unauthorized Use”** means any abusive or fraudulent use or any use that is not consistent with this Schedule or violates applicable law, and includes those uses set forth in Section 5 (Conduct) below.
- k. **“User”** means (i) you and your personnel, employees, consultants, contractors or Representatives, and (ii) your customers, patrons, clients, accountholders, website visitors or other third parties, in each case that accesses or uses the Application.
- l. **“User Content”** means any information, materials, trademarks, service marks, logos, graphics, images, designs, plans, information, audio, video, and audio-visual materials and other content uploaded, entered or provided into the Application by you or your Users.

## 2. Grants of License and Payment of Fees

### Application License

- a. Subject to your compliance with the Merchant Agreement, including this Schedule, we grant to you a revocable, non-exclusive, non-transferable, non-assignable, limited license to use the Application as provided for download to, or access from, your Authorized Devices, solely in accordance with the Merchant Agreement and this Schedule. The Application is licensed and not sold to you by Moneris and Moneris and its licensors reserve all rights not expressly granted to you in this Schedule.
- b. You acknowledge and agree that Moneris and/or its licensors own all legal right, title and interest in and to the Application, including without limitation, any copyright, trade-mark, patent and trade secret rights that exist therein. You will not, directly or indirectly:
  - i. copy the Application or disclose or distribute the Application to third parties;
  - ii. rent, lease, lend, sublicense, assign or transfer the Application to a third party;
  - iii. use the application to operate a service bureau or use its functionalities to provide business services to a third party;

- iv. remove, alter or destroy any proprietary, trademark or copyright markings of confidentiality placed upon or contained within the Application; or
  - v. modify, translate, reverse engineer, decompile or disassemble the Application or otherwise derive the source code from the Application or any component thereof or create derivative works that are based on, copy or integrate the Application.
- c. You acknowledge and agree that Moneris and its licensors may, at any time change, suspend, remove or disable access to Application or impose limits on the use of the Application without notice. Without limiting any other provision of the Merchant Agreement or this Schedule, in no event will Moneris be liable for the modification, limitation, removal of or disabling of access to the Application.
- d. You agree that the rights granted to you in this Section 2 will terminate automatically without notice from Moneris upon your failure to comply with the Merchant Agreement. Upon the termination of this license, you agree to cease all use of the Application and destroy all copies, full or partial, of the Application.
- e. You agree to strictly follow any instructions that Moneris provides to you from time to time in connection with use of the Application, including, without limitation, any instructions contained in the documentation related to the Application. In the event Moneris notifies you of, or provides any modifications to, the Application, you agree to immediately install and use any applicable patches and fixes upon receipt of same from Moneris.
- f. You agree that Moneris has no obligation to provide training, support, maintenance, or other assistance for the Application except as may be set out in your Merchant Agreement.

### **Usage Monitoring**

- g. Moneris may, but has no obligation to, monitor your use of the Application, Authorized Device(s) and any User Content to (i) monitor, detect and address any usage, availability, performance or security issues; and (ii) determine and ensure your compliance with this Schedule. We may also, in our sole discretion, review, edit, refuse to post, or remove any User Content that you post, transmit or upload to the Application. We may also disclose any User Content or Merchant Data on the Application in order to comply with any law, regulation, order, decision, ruling, rule, investigation or requirement applicable to us or with a government request.
- h. The Application may provide functionality that enables you to monitor the access and use of the Application by Users, including monitoring and keeping records of your and your Users' use of the Application, activities on the Application and any content that you or your Users post, transmit or upload to the Application, including for the purposes of (i) detecting irregular or suspicious activity; and (ii) ensuring compliance with this Schedule. You are responsible for making your Users aware of such monitoring and for using any such information in accordance with this Schedule and applicable laws and regulations.

### **User Content and Merchant Data License**

- i. You grant Moneris a non-exclusive, perpetual, world-wide, fully paid-up and royalty-free license to copy, store, reproduce, modify, adapt, re-publish, display and otherwise use the User Content and Merchant Data, for the purposes of providing the Moneris Go Retail POS Service and the Application to you.
- j. You are solely responsible for the accuracy and correctness of any User Content or Merchant Data that you or your Users enter into the Application. You represent and warrant to us that:

- i. You have all permissions, license, rights and consents necessary to provide to Moneris the User Content and Merchant Data and use it in connection with the Moneris Go Retail POS Service and the Application;
- ii. The User Content will not infringe, violate or otherwise conflict with any intellectual property right, or any right of publicity or privacy, of any third party; and
- iii. You will not provide or upload to the Application any User Content or Merchant Data that violates this Schedule, including, without limitation, Section 5 (Conduct) below.

### **Fees**

- k. You agree to pay the fees for the Moneris Go Retail POS Service set out in your Card Acceptance Form which is part of the Merchant Agreement. You further agree that we may debit your bank account or otherwise collect the fees referenced above in accordance with the terms of the Merchant Agreement. In the event that any such debit cannot be processed, you will immediately pay us the amount owing together with applicable interest. An account statement will be sent to you by mail or provided electronically, detailing the specifics relating to your fees.

## **3. Credentials and Responsibility for Your Users**

- a. You will be assigned and/or will need to set up your own ID and password, or other credentials, to access the Application (the “**Credentials**”). You acknowledge and agree that your Credentials can be used to access information related to your account and your use of the Application.
- b. You are responsible for maintaining the confidentiality of your Credentials. You agree not to provide the Credentials to anyone and not to permit access to the Application using the Credentials by any other person. Any access to or use of the Application using the Credentials will be deemed to be a use by you and will be subject to this Schedule.
- c. You are solely responsible for any use of the Application by you, the Users and by any person using the Credentials or otherwise accessing your account. You will ensure that in using the Application, you and the Users comply with this Schedule. Any use of the Application by a third party using the Credentials will be deemed to be use of the Application by you, whether or not done with your knowledge or consent. You will have the sole responsibility to safeguard the Credentials and to cease any unauthorized use of your account or the Credentials and you shall be liable for any loss, damage or expense arising from such use by a third party.

## **4. Using the Application**

- a. Your Users will be provided with access to and the ability to use the Application. You are responsible for ensuring that your Users are aware of and comply with the terms and conditions and any rules and restrictions that are applicable to their use of the Application, including as set forth herein and in any additional user terms and conditions applicable to Users that are set forth or provided within the

Application (“**User Terms and Conditions**”). The User Terms and Conditions are in addition to, and do not supersede or replace, this Schedule.

- b. You will immediately notify us in the event that you become aware of or suspect (i) that the Credentials are being used or accessed in an unauthorized manner or by any person other than the appropriate User; (ii) that any person is using the Application for an Unauthorized Use; or (iii) that any person is using the Application in contravention of this Schedule or the User Terms and Conditions.
- c. You will ensure that the use of the Application by you and your Users complies with all applicable laws and regulations (including those relating to privacy, the handling of Personal Information and anti-spam) and any terms, conditions, rules, policies, procedures and technical specifications as may be provided and updated by us from time to time in respect of the Application. You further acknowledge and agree that your and your Users’ use of the Application may be restricted or limited as a result of federal, provincial, or other applicable laws or regulations and you will act in accordance with all such restrictions and limitations.
- d. You acknowledge and agree that we may interrupt the availability of the Application or any or all of its contents at any time, including for the purposes of repair or maintenance. We will make reasonable efforts to provide you with advance notice of such interruption, provided that in certain instances, including emergency maintenance, such notice will not be possible. You will immediately notify us if you become aware or suspect that there has been any security incident concerning the Application and your Application account, including any unauthorized access to or use or misappropriation of Merchant Data or User Content.
- e. You must take your own precautions to ensure that the process which you employ for accessing the Application does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your computer system. For greater certainty, we do not accept responsibility for any interference or damage to your computer system which arises in connection with your use of the Application.
- f. It is your responsibility to provide customer care and support services and to respond to any inquiries or complaints by your customers regarding the products and services you provide or manage using the Application.

## **5. Conduct**

- a. You agree when using the Application, that you and your Users will abide by this Schedule and all other procedures, codes of conduct and other notices we may provide.
- b. You agree not to use (or allow anyone else to use), directly or indirectly, the Application for any Unauthorized Use including without limitation:
  - i. Defaming, abusing, harassing, stalking, threatening or otherwise violating the legal rights of others;
  - ii. Publishing, posting, uploading, distributing, conveying or disseminating any material or information that is profane, defamatory, infringing, obscene, salacious, abusive, libelous, unlawful, deceptive or otherwise offensive or objectionable;
  - iii. Uploading, posting, reproducing or distributing any material protected by copyright, intellectual property laws, privacy or other proprietary rights unless you have obtained permission;

- iv. Using the Application to sell, offer for sale or advertise counterfeit goods;
- v. Restricting, inhibiting or interfering with the proper functioning of the Application;
- vi. Attempting to or assisting another to access, alter or interfere with the Application or another organization's account;
- vii. Using the Application in a manner that harms or could harm us, our affiliates or any merchant of ours;
- viii. Using any portion of the Application as a destination linked from any unsolicited bulk messages or unsolicited commercial messages (e.g., spam);
- ix. Using any unauthorized third party software or service to access the Application;
- x. Damaging, disabling, overburdening or impairing the Application;
- xi. Reselling, redistributing, altering, modifying, reproducing, tampering with or rerouting the Application;
- xii. Engaging in any conduct involving the Application that would constitute an illegal activity, criminal offence or give rise to civil liability under any local, provincial, state, federal or other law or regulation;
- xiii. Tampering with or making an unauthorized connection to the Application;
- xiv. Reverse-engineering, decompiling, disassembling or creating derivative works of the Application;
- xv. Uploading to the Application a virus, drop dead device, lock, key, bomb, worm, Trojan-horse, trap door or other harmful, limiting destructive or debilitating feature; and
- xvi. Using the Application for anything other than the purpose(s) contemplated in this Schedule.

## 6. Changes to the Application

We may, in our sole discretion and without advance notice or liability, alter, modify and/or update the Application including any of the Content, the available features and/or any of the hardware or software that you require to access the Application. Such alterations, modifications and updates may include the addition or deletion of features, functionality, text, data and other content.

Upon notice to you we may, when feasible, remotely update any Application-related software that is downloaded onto your Authorized Devices, including for the purposes of maintenance, patching or upgrading some of all of the Application. Any updated version of the Application furnished to you by us will be subject to this Schedule. You shall cooperate, as necessary (including as prompted on-screen), to perform or complete such updates.

## 7. Functionalities Regarding Taxes and other Regulated Activities

The Application offers functionalities that may relate to activities prescribed or regulated by applicable federal and provincial laws and regulations, such as the application of sales tax to transactions with your customers, the sending of electronic messages to customers and other recipients, and the advertising and sales of regulated products or services ("**Regulated Activities**").

You are solely responsible for your engagement in any Regulated Activities and your compliance with all applicable laws and regulations. We disclaim any representation or warranty that your use of the Application will enable or ensure your compliance with applicable laws and regulations or meet your requirements in

respect of any Regulated Activity. You understand that you may need to obtain independent legal advice about your obligations under applicable laws and regulations and that we cannot provide you with such legal advice.

Without limiting the foregoing, you expressly assume all responsibility for the following.

- **Application of Sales and other Taxes.** You are liable and responsible to ensure the correct applicable federal or provincial taxes, including goods and services, harmonized sales, Quebec sales and retail sales taxes (collectively, “**Sales Tax**”) are charged by you to your customers. You must determine whether and what Sales Taxes to apply to sales of your products and services, are responsible for obtaining and maintaining registration with the appropriate government taxing authority. You are responsible for determining and collecting any applicable import or export taxes, customs or duties in connection with your sale, rental or shipment of your products or services. You are responsible to ensure that applicable invoices or receipts meet the necessary documentary requirements established by the applicable law. In the event that you incur a tax liability as result of the products or services sold to their customers, you will indemnify Moneris and its affiliates for all taxes, interest and penalties which may be assessed by any taxing authority that arise from the sale of your products and services.

We are not engaged in rendering tax, accounting, legal or other professional advice or service. If accounting advice or other expert advice is required, the service of a competent professional should be sought. It is your responsibility to keep informed of accounting and tax changes that may affect you and to ensure that you follow these changes. In addition, certain tax authorities may require you to report sales, taxation, tip and other transaction-related information to them using devices or solutions certified by such tax authorities. You are responsible for ensuring that the devices and solutions that you use in connection with such reporting meet all applicable requirements and certifications.

The Application may assist you by presenting suggested tax amounts based on information you enter into the Application. These suggestions are subject to and limited by the paragraphs above. You acknowledge and agree that we do not guarantee the accuracy of this information for your purposes and that you remain responsible for determining any and all applicable Sales Tax and other amounts. You should review any information suggested by the Application to determine if it accords with your requirements.

- **Regulated Products.** You are responsible for determining and complying with the laws, regulations and any other requirement applicable to your sale of alcohol and other regulated products, including, without limitation, any licensing requirements and age-related restrictions and any import or export restrictions that may be applicable to you.
- **Sending Electronic Messages.** You are responsible for determining and complying with all laws and regulations relating to the sending of email, SMS and other electronic messages to recipients, including, without limitation, CASL and other anti-spam laws. If required by applicable laws and regulations, you will ensure that you have and record the proper consent from any recipient before you send them an electronic message using the Application. Messages sent from the Application may be effected through our networks, systems, domains and/or telephone numbers and are sent on your behalf in our capacity as service provider to you. You agree not to use the Application to send unsolicited commercial electronic messages, or to distribute any marketing materials, to advertise or promote anything, to encourage

participation in any commercial activity, to offer to purchase, sell, barter or lease a product, goods, a service, land or an interest or right in land, to offer to provide a business, investment or gaming opportunity, or to promote a person that does any of the foregoing.

## **8. Intellectual Property and Confidentiality**

- a. You acknowledge that the Application, the Content (other than the User Content) and all trademarks, service marks and logos contained in or accessible to you via the Application and all intellectual property rights relating thereto are the exclusive property of us and/or any third party credited as the provider of such materials and information. We and/or our licensors exclusively own and retain all title, ownership rights and intellectual property rights including without limitation patents, copyrights and trade secrets in and to all documentation, know how, operating processes and procedures, software and software configuration parameters and any modifications and translations thereof incorporated into or in connection with the Application and the Content. The technical procedures, processes, methods of operation and concepts which are embodied within the Application are the intellectual property of us and/or our licensors. You will not have or acquire any rights or interest in the Application, the Content or the trademarks, service marks and logos except as specifically set out herein.
- b. You acknowledge that any software related to the Application contains copyrighted and other proprietary and confidential information and material, and you will respect all such proprietary rights and take such precautions as may be reasonably necessary to protect private, confidential and other proprietary information and material from Unauthorized Use or disclosure.
- c. If a third party believes that you are infringing their intellectual property rights, they may submit a notice to us, and we may remove or disable access to the User Content claimed to be infringing.

## **9. Third Party Services**

We are not responsible or liable for, and do not make any representations or warranties concerning, any Third Party Service, including their content, data, information or practices. The inclusion or accessibility of a Third Party Service via the Application, including via integration and/or API, does not imply any endorsement, recommendation or responsibility by us in relation to such Third Party Service. Your access and use of any Third Party Service shall be governed solely by the terms and conditions of the applicable third party that provides the Third Party Service to you. We are not liable for, and you irrevocably waive any claim against us in respect of, any damage or loss caused or alleged to be caused by your enablement, access or use of any Third Party Service.

You are responsible for any disclosure of Personal Information or User Content by you from the Application to a Third Party Service, including via integration and/or API. You must ensure you comply with all applicable consent and disclosure requirements under applicable laws and regulations in connection with any such transfer of Personal Information or User Content.

### **Virtual Shopping Cart Integration to Storefront**

Without limiting anything else in this Section 9, the following applies if you use the Moneris Go Retail POS Service in connection with a front-end e-commerce storefront provided by you or your Third Party Service provider:

- a) Any virtual shopping cart functionality provided by Moneris as part of the Moneris Go Retail POS Service is intended as a back-end shopping cart management service only. If you wish to use such functionality in connection with an online or e-commerce store, you are responsible for obtaining and maintaining the front-end, public-facing website or other application(s) that allow your online store to be visited and used by your customers (your **“Storefront”**). Moneris has no responsibility for the provision, availability, maintenance or security your Storefront or the information stored or hosted within your Storefront. You or your Third Party Service provider who maintains your Storefront (**“Storefront Provider”**) is solely responsible for all aspects of the Storefront. If the Moneris Go Retail POS Service includes functionalities that allow you to transfer or export any information concerning your merchant account or activities with Moneris into your Storefront, your use of such functionalities constitute your instruction and consent to transfer or export such information to your Storefront and your Storefront Provider, as applicable, and you represent and warrant that you have all necessary permissions, consents, rights and licenses required for such transfer or export.

### **Shipping**

The Application does not include or facilitate the shipping, transportation or delivery (**“Shipping”**) of your products or services. All Shipping of your products or services to your customers is your responsibility. The Application may provide links or integration to third parties that provide Shipping services, which are Third Party Services pursuant to this Agreement.

## **10. Termination and Effect of Termination**

We may immediately and without prior notice restrict, suspend or terminate your access to the Moneris Go Retail POS Services and/or the Application and/or suspend or terminate your rights this Schedule, upon the occurrence of any of the following:

- a. If you breach or if we suspect you have breached this Schedule in whole or in part, including the usage restrictions and confidentiality obligations;
- b. Such restriction, termination or suspension is required by law or regulation or a court or other authority; or
- c. Your continued use of or access to the Application poses a level of risk, including, without limitation, security or privacy risk, to the Application or any third party;
- d. You breach or we suspect you have breached the terms and conditions of any other agreement between us and you, including your Merchant Agreement; or
- e. Your Merchant Agreement expires or is terminated.

Upon termination of this Schedule for any reason, (i) you and your Users will immediately discontinue your use of the Application (except as expressly permitted hereunder); and (ii) Moneris has no further obligations to retain any information or data related to your use of the Application, including any Merchant Data and User Content. Unless prohibited by applicable law, we will use commercially reasonable efforts to retain the Merchant Data and User Content for a period of 60 days, or such other period as we may agree to in writing, following termination of this Schedule, in order to allow you to retrieve any Merchant Data or User Content which you may require after the termination. During such period, your obligations under this Schedule regarding Merchant Data and User Content will remain in effect. You acknowledge and agree that after this 60 days' period, the Merchant Data and User Content may be permanently deleted by Moneris and may no longer be available to you.

## 11. Disclaimer of Warranties

- a. We do not warrant the accuracy, adequacy or completeness of the Application or the Content nor do we undertake to keep the Content updated. We do not accept responsibility for any loss suffered as a result of reliance by you upon the accuracy or currency of the Content or the Application.
- b. We are not responsible for the loss of any User Content, Merchant Data or other data or information you, your Users or your customers have uploaded, posted or transmitted to the Application and we have no obligation to maintain any data or information, you or your customers have uploaded, posted or transmitted to the Application. You are responsible for maintaining any copies or backups of such data that you may determine to be necessary or desirable.
- c. The Moneris Go Retail POS Service, the Application and the Content are accepted by you "as is" and "as available". All other representations or warranties, express or implied, including any warranties of merchantability, non-infringement, or as to correctness, quality, accuracy, completeness of information or reliability or as to fitness for a particular purpose and or any representations or warranties under applicable sale of goods legislation or arising from a course of dealing or trade practice are specifically excluded and disclaimed. We do not warrant that the Application or any of the Content will meet your requirements, including requirements that you may have due to your obligations under applicable laws and regulations. Neither we nor our Representatives make any representation or warranty (i) that access to the Application will be uninterrupted or error free, or (ii) that security breaches will not occur with respect to any information communicated through the Application, the Internet or any common carrier communications facility. We assume no responsibility to you or any other person for the consequences of any errors or omissions.

## 12. Limitation of Liability

- a. You acknowledge and agree that neither we nor our Representatives will be liable to you, any User or any other person for any Claims that may arise directly or indirectly as a result of your, your Users' or any other person's use of the Application and/or the Content including without limitation:
  - i. any failure, termination, suspension, delay or disruption of the Application, the Internet, or any communications network, facility or equipment;
  - ii. any damages arising from your or your Users' failed attempts to access the Application;
  - iii. any damages arising from any failure by you or your Users to view or use the Application in, or transmit, post, upload any information or data to the Application in accordance with the Application's documentation and/or instruction from us, or from any human, machine or software errors or faulty or erroneous input by you;
  - iv. the integrity of any of the content that you or your Users transmit or upload to the Application or that has been downloaded from the Application; or
  - v. any damages resulting from any delays and/or losses including without limitation any loss of data or information arising in connection with the Application.
- b. You expressly understand and agree that we and our Representatives make no representations or warranties whatsoever and have no legal, equitable, or other liability of any kind to you, regardless of the

form of the action, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise.

- c. To the fullest extent permissible by applicable law, we expressly disclaim and shall have no liability whatsoever for any direct, indirect, special, incidental or consequential cost, loss, expense, damage or liability of any nature, loss of profits or revenue, loss of data, downtime costs or business opportunities arising out of or in connection with the Application or the Content including without limitation: (i) the failure of the Application to operate at any time; (ii) any unauthorized access to the Application and/or communications transmitted over the network to or from the Application; and (iii) your or any third party's use of the Application or the Content. In no event shall our aggregate liability to you exceed the total fees paid by you to Moneris for your use of and access to the Application during the three (3) months immediately prior to the date of the event giving rise to such liability (such amount, for clarity, excluding any other fees paid pursuant to the Merchant Agreement, such as payment transaction fees and equipment fees). You acknowledge that this is a fair allocation of the risks and responsibilities under this Schedule and, to the extent permissible by applicable law, you waive any claim that the disclaimers of liability contained in this paragraph deprives you of an adequate remedy.

### **13. Indemnity**

You agree to defend, indemnify, and hold harmless Moneris and our Representatives from and against any losses or Claims to the extent arising from or relating to (i) the use of the Application or Content by you or your Users; (ii) the use of your or your Users' Credentials by any other party; (iii) failure by you, your Users or any person using your Credentials to comply with this Schedule; and (iv) the User Content and Merchant Data. For certainty, you will indemnify us from and against any Claims by any of your customers or clients related to your use of the Application or Content, or any Claims arising from any regulatory or governmental investigations, fines, penalties or other liabilities related to your use of the Application.

### **14. Personal Information**

Without limiting anything else herein, you acknowledge that certain information collected, used and disclosed in connection with the Application may constitute Personal Information and you agree that any such Personal Information is also subject to our privacy notice, as it may be amended from time to time, which can be found at the following link: <https://www.moneris.com/en/Legal/Privacy-Notice> (the "Privacy Notice").

Personal Information that you or your Users enter into or make available via the Application may be used by Moneris to make the Application and its functionalities available to you, your Users and your customers. These functionalities may include automated decision-making tools that enhance your, your Users' and your Customers' experience. You acknowledge and agree that Moneris and its agents, service providers, and subcontractors may access and store the Personal Information you provide, in or from locations throughout Canada and outside of Canada. Personal Information relating to residents of Quebec may be transferred and stored outside of Quebec. Additionally, you understand that we may use reasonably de-identified formats of such information for purposes including, but not limited to, the provision, maintenance, management and improvement of the Application, and for aggregated and statistical analysis and reporting.

Any Personal Information that you, your Users or your customers enter, or allow to be entered, into the Application is accessed, collected, handled and disposed of by Moneris as a service provider to you, and you hereby consent to such uses, which will be subject to the terms of the Privacy Notice and this Schedule. You acknowledge and agree that it is your responsibility to ensure that such Personal Information is collected,

used and disclosed to us in compliance with all applicable laws, rules and regulations and your applicable stated privacy policies, and that you are responsible for

(i) providing all relevant disclosures and transparency statements to Users, customers and any other persons whose Personal Information you submit to the Application, and (ii) obtaining all necessary consents, rights and authority to collect and disclose such Personal Information to us to be used by us, and any of our agents, service providers or subcontractors as set forth in this Schedule and/or for the purpose of providing the Application.

## **15. Feedback**

You may provide feedback, suggestions, comments, improvements and ideas (collectively "Feedback") to us but you are not required to do so. We are not required to hold such feedback in confidence. We may use Feedback for any purpose without obligation of any kind. You assign all right, title, and interest in and to any Feedback that you provide to us without any obligation of confidentiality, attribution, accounting, compensation or other duty to account. To the extent a license is required under your intellectual property rights to make use of the Feedback, you grant to us and our affiliates an irrevocable, non-exclusive, perpetual, world-wide, transferable, sublicensable, royalty-free, fully paid-up license to use the Feedback in connection the business of us and our affiliates. You forever waive and agree never to assert against Moneris, its affiliates, successors, business partners and licensees and their respective officers, directors, shareholders, employees, agents and advisors any and all moral rights or other similar rights that you or your employees and subcontractors may have in the Feedback, to the extent permissible under applicable law.

## **16. Force Majeure**

We will not be liable for any delay or failure to carry or make continuously available the Application including without limitation where such delay or failure is due to any cause beyond our reasonable control or the control of any of our third party providers, including without limitation, restrictions of law or regulation, labour disputes, acts of warfare or terrorism, acts of God, mechanical or electronic breakdowns, telecommunication facilities breakdowns or software bugs, errors or failures.

## **17. Governing Law**

Your use of the Application and this Schedule will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. You submit to the exclusive jurisdiction and venue of the courts of Ontario, located in Toronto, in order to enforce any provision of this Schedule and for any action or suit arising out of the Application or your use thereof.

## **18. Severability and Waiver**

Each of the provisions contained in this Schedule is distinct and severable and a declaration of invalidity or unenforceability of any such provision or part thereof by a court of competent jurisdiction will not affect the validity or enforceability of any other provision in this Schedule.

You agree that our conduct, delay, actions or failure to enforce any of the terms and conditions of this Schedule does not waive any of our rights under this Schedule or change your obligations under this Schedule.

## **19. Assigning Your Rights or Obligations**

You cannot assign all or part of your rights or obligations under this Schedule without first getting our written approval. However, we can assign any of our rights and obligations under this Schedule. This Schedule binds any permitted successors and your permitted assigns.

## **20. For Residents of Quebec**

It is agreed that the express wish of the parties is that this Schedule and any related documents be drawn up and executed in English. *Il est la volonté expresse des parties que cette convention et tous les documents s'y rattachant soient rédigés en anglais.*