

Merchant Agreement

This MERCHANT AGREEMENT (this “**Agreement**”) is entered into by and between Payment Services Interactive Gateway Inc. (“**PSiGate**”, “**we**”, “**us**” or “**our**”), Peoples Trust Company (“**Peoples Trust**”), and the merchant identified in the attached Card Acceptance Services and Gateway Application (the “**Merchant**”, “**you**” or “**your**”).

PSiGate and Peoples Trust will provide you with the Card Acceptance Services described in this Agreement. Peoples Trust is a member of the Card Associations and provides sponsorship to PSiGate in accordance with the applicable Card Association Rules. Peoples Trust’s obligations under this Agreement are to provide sponsorship to PSiGate and to enable PSiGate to offer you the Card Acceptance Services in accordance with the Card Association Rules. Beyond those obligations, Peoples Trust will not have any obligation or liability in connection with any services provided by PSiGate to the Merchant under this Agreement. As between themselves, the rights and obligations of Peoples Trust and PSiGate are governed by the agreements between them and the Card Association Rules, if applicable. PSiGate is the provider of the Gateway Services described in this Agreement, which may include the processing, transmitting and storage of Account and Transaction Records. In providing these services, PSiGate warrants that it is, and shall remain during the currency of this agreement PCIDSS Level 1 Compliant.

In consideration of the mutual promises made and the mutual benefits to be derived from this Agreement, PSiGate, Peoples Trust and the Merchant agree as follows:

Article A – Definitions

1. As used in this Agreement, the following words will have the following meanings when capitalized:
 - a. “**Application**” means the Card Acceptance and Gateway Application including, without limitation, the Settlement Account PAD Agreement, the Service Account PAD Agreement and the Fee Schedule, completed by or on behalf of Merchant.
 - b. “**Authorization**” means the approval by the Card issuer or Card Association to validate a Transaction.
 - c. “**Card**” means any valid credit card or debit card, whether represented on a card plastic or mobile device, issued by a member of a Card Association and bearing its respective trade names, trademarks, and/or trade symbols, that Merchant is approved to accept under this Agreement.
 - d. “**Card Acceptance Services**” means the activities undertaken by the Servicers to authorize, process and settle Transactions submitted by Merchant pursuant to this Agreement.
 - e. “**Card Association**” means Mastercard, Visa, Interac Association, or any other credit or debit card association or network whose cards are accepted by the Servicers for processing.
 - f. “**Card Not Present Transaction**” means a transaction between a Merchant and a Cardholder using a Card that is not physically presented to the Merchant at the time of the transaction, such as transactions initiated over the Internet, telephone, through mail-order or fax.
 - g. “**Card Present Transaction**” means a transaction between a Merchant and a Cardholder using a Card that is initiated at a payment terminal at a point-of-sale.
 - h. “**Cardholder**” means the person whose name is embossed or printed on the face of a Card or other authorized users of a Card.
 - i. “**Cardholder Data**” means any information about an identifiable Cardholder, including Transaction Records as well as any information used to authenticate a Transaction such as, but not limited to, payment card number, payment card expiration date, Personal Identification Number (PIN), Card Verification Value (CVV), Card Verification Value2 (CVV2), passwords, pass phrases, digital certificates, and biometric authentication mechanisms.
 - j. “**Chargeback**” occurs when a credit or a payment for a Transaction (or disputed portion thereof) is reversed after an authorization number has been provided.
 - k. “**Contactless**” means a Card Present Transaction that does not require contact (swipe or PIN entry) with the payment terminal at the point-of-sale.
 - l. “**Effective Date**” means the date of the welcome letter sent to Merchant by Servicers regarding the set-up of the Merchant account.
 - m. “**Fees**” means Card Fees and Other Fees.
 - n. “**Fee Schedule**” means Schedule A to the Application.
 - o. “**Card Fees**” means the Merchant’s discount rate and the other fees that Merchant is obliged to pay that are based on Card Association fees or rates, as set out in the Fee Schedule under the heading “Merchant Discount Rate Program”.
 - p. “**Gateway Services**” means the payment processing services offered through the PSiGate Payment Gateway.
 - q. “**Initial Term**” has the meaning set out in Article F – Term and Termination.
 - r. “**Merchant Platform**” means Merchant’s online portal for payment submission along with all associated software code, routines, business processes and related intellectual property of Merchant.
 - s. “**Other Fees**” means the fees other than Card Fees that Merchant is obliged to pay, as applicable, for the Services requested from the Servicers in the Application, as set out in the Fee Schedule under the headings “Service Fees”, “Merchant Account Transaction Fees”, “Merchant Account Service Fees”, “eCommerce Services” and “POS Equipment”.
 - t. “**PCI DSS**” means Payment Card Industry Data Security Standards, which are security standards set by the Card Associations and are applicable to you.
 - u. “**POS Material**” means point of sale marketing material provided to Merchant by the Servicers.
 - v. “**Privacy Laws**” means the *Personal Information Protection and Electronic Documents Act* (Canada), as amended or supplemented from time to time, and any other Canadian federal or provincial legislation now in force or that may in the future come into force governing the collection, use, disclosure and protection of personal information in the private sector applicable to a party to this Agreement or to the Services.
 - w. “**Renewal Term**” has the meaning set out in Article F – Term and Termination.
 - x. “**Reserve Account**” means an account established in accordance with Article G of this Agreement.
 - y. “**Rules**” means the written rules and regulations imposed or adopted by any Card Association, as they may be amended from time to time. The Rules are published on the web sites of the Card Associations and links to online copies of the Rules are included in the User Documentation.
 - z. “**Service Account**” means an account established at a financial institution designated by Merchant as the account to be credited and debited by the Servicers for Other Fees.
 - aa. “**Service Account PAD Agreement**” means the Pre-Authorized Debit Agreement relating to debiting Other Fees from the Service Account, set out in the Application.
 - bb. “**Services**” means the Card Acceptance Services and the Gateway Services, as applicable.
 - cc. “**Servicers**” means Peoples Trust and PSiGate.
 - dd. “**Settlement Account**” means an account established at a financial institution designated by Merchant as the account to be credited and debited by the Servicers for Transactions, Card Fees, Chargebacks and other amount assessed by a Card Association and passed-through to Merchant pursuant to the terms of this Agreement.
 - ee. “**Settlement Account PAD Agreement**” means the Pre-Authorized Debit Agreement relating to the Settlement Account, set out in the Application.
 - ff. “**Software**” means the PSiGate’s software used to provide the Services, which includes PSiGate’s proprietary authorization system, payment gateway, and platform, User Documentation, and all copyrights, know-how, trade secrets, trademarks, service marks, trade names, patents, and other proprietary rights in the same.
 - gg. “**Third Party Gateway Services Provider**” has the meaning given in Section 18.
 - hh. “**Threatening Condition**” means that a Merchant’s conduct or a Merchant’s products or services are in violation of applicable law or pose a threat to the Software.
 - ii. “**Transaction**” means any legitimate Card Present Transaction or Card Not Present Transaction between Merchant and a Cardholder in which a Card is used that involves a sale, refund or adjustment in the amount of a sale or refund.

- jj. “**Transaction Records**” include sales slips and credit slips, which may be paper-based or electronic records that you give the Cardholder showing the amount of the Transaction and whether the Transaction was approved or declined by the Card issuer.
- kk. “**User Documentation**” means the welcome letter you received regarding the set-up of your Merchant account with additional details regarding the provision of the Services, including instructions on integration with the Software, and any other information Servicers may provide you regarding your Merchant account.

These definitions shall survive termination of this Agreement.

Article B – Card Acceptance Services

The following provisions apply to both Card Present Transactions and Card Not Present Transactions, unless otherwise specified.

2. Authorization.

- a. Merchant shall comply with any authorization procedures, included pre- and post-authorization procedures, set out in this Agreement, in the User Documentation and the Card Association Rules, and as the Servicers may otherwise direct from time to time.
 - b. Merchant acknowledges that Authorization: (i) indicates only the availability of credit at the time of Authorization; (ii) does not warrant that the person presenting the Card is the rightful Cardholder; and (iii) is not an unconditional promise or guarantee by Servicers that any Transaction will not be subject to Chargeback.
 - c. Servicers shall have no obligation to process any Transactions initiated with a Card type not selected by Merchant in the Application and Servicers shall be entitled to decline such Transactions without first attempting to obtain an Authorization. In the event any such Transaction is inadvertently not declined by Servicers and is authorized by a Card issuer or Card Association, Merchant shall be fully liable for each Transaction, as if the Card type was selected by Merchant in the Application.
3. Merchant agrees to accept all valid and unexpired Cards presented by Merchant’s customers for payment, and to honour any Card presented regardless of type of Card or Card Association.
4. Merchant shall process all of its Transactions exclusively through the Servicers hereunder and shall not, directly or indirectly, process any Transactions through any third party.
5. Merchant is permitted to provide (i) discounts to customers for cash purchases or (ii) differential discounts to Cardholders among different Card Associations, to the extent permitted by the Card Associations.
6. If in your Application you have elected to accept credit Cards from a particular Card Association, you are not required to accept debit Cards from that same Card Association, and vice-versa. For Card Present Transactions this applies to mobile-based payments as well as card-based payments.
7. In respect of Card Present Transactions, if in your Application you consented to accept Contactless Transactions (whether card-based or mobile-based), you may cancel that acceptance at any time without penalty by giving us written notice. Cancellation will take effect once we confirm receipt of that notice. If Fees in respect of mobile-based Contactless Transactions increase relative to Fees in respect of card-based Contactless Transactions, you may cancel your acceptance of mobile-based Contactless Transactions without penalty by giving the Servicers 30 days’ written notice while maintaining all other terms of this Agreement, including without disabling your acceptance of card-based Contactless Transactions. Cancellation of your mobile-based Contactless Transactions will take effect once we confirm receipt of your cancellation notice.
8. Merchant is not permitted to do any of the following:
- a. charge Cardholders a fee or surcharge for accepting Cards unless permitted by the Card Brand rules;
 - b. require a Transaction minimum value for accepting Cards;
 - c. mislead any Cardholder into believing that his or her Transaction is being processed on one Card when it is actually being processed on another Card;
 - d. use the Services for illegal purposes, or to interfere with or disrupt other users of the Services; or
 - e. use any Card other than for the sole purpose of completing a bona fide Transaction.

9. Merchant shall submit Transaction Records to Servicers no later than the next business day immediately following the day that Transactions are originated, in the manner indicated in the User Documentation or as otherwise directed by Servicers.
10. Merchant is not permitted to submit a Transaction:
- a. prior to the term or following termination of this Agreement;
 - b. while Merchant is in breach of this Agreement;
 - c. while the Merchant or any of its affiliates or directors, officers, employees, agents or representatives are listed on the Member Alert To Control High-Risk merchants list of Mastercard (the Match List) in Canada or the United States;
 - d. if Merchant has previously sent the same Transaction to another acquiring bank;
 - e. that has failed address verification;
 - f. that is already subject to a partial refund under this Agreement or otherwise;
 - g. that is known or suspected to be fraudulent or unacceptable by the Servicers regardless of whether Merchant has been given notice of such Transactions by the Servicers or is submitted by any business other than Merchant, as authorized by this Agreement;
 - h. for the purchase of products or services that are illegal in Canada or the United States;
 - i. for a customer who is a shareholder, director, officer, employee, agent or representative of Merchant or any of its affiliates;
 - j. that was made in connection with an e-wallet, virtual cash or other payment aggregation service;
 - k. for a good or service that is being sold for a price other than the posted price.
11. In respect of each Transaction, Merchant represents and warrants to the Servicers that:
- a. it represents a legitimate sale of goods or services by Merchant to a Cardholder in the ordinary course of Merchant’s business;
 - b. it was not previously submitted under this Agreement;
 - c. it represents an obligation of the cardholder for the amount of the Transaction,
 - d. the amount of the Transaction is only for the goods or services sold including applicable taxes;
 - e. the amount charged for the Transaction is not subject to any dispute, setoff or counterclaim;
 - f. Merchant has no reason to believe that the Transaction is fraudulent or not authorized by the Cardholder, or that the enforceability or collectability of the Cardholder’s obligation is or could be impaired in any way; and
 - g. it was made in accordance with, and complies with the terms of, this Agreement, the User Documentation, the Rules and applicable law.
12. **Settlement.**
- a. The Servicers will settle with you by crediting your Settlement Account with an amount equal to the total of your sales Transactions less your returns and refund Transactions and Chargebacks. The Servicers’ standard funding schedule is daily, weekly or one week in arrears, following settlement batch close of the Merchant’s terminal. An alternative funding schedule may be imposed at Servicers’ discretion, based on a number of credit and risk considerations. Servicers will give Merchant reasonable advanced notice of any such change in funding schedule. All credits to the Settlement Account or other payments to Merchant are subject to final audit by the Servicers and the Servicers have a right to debit or credit the Settlement Account to correct any errors.
 - b. The transfer of settlement funds is normally conducted by electronic funds transfer (EFT) to your Settlement Account. Due to the nature of EFT, the electronic networks utilized for the movement of funds, and the fact that not all financial institutions belong to the EFT network, payment to Merchant may be delayed. Servicers will not be liable for any delays in transfer of settlement funds or errors in debit and credit entries caused by third parties.
 - c. Servicers reserve the right to divert and hold all settlement funds when Servicers are investigating any breach of this Agreement by Merchant or have reasonable cause to believe that Merchant may have violated a provision of this Agreement, the User Documentation or the Rules, or is engaged in illegal or fraudulent activity, or has

excessive Chargebacks. Servicers' right to withhold settlement funds as set forth in this Section and as may be set forth elsewhere in this Agreement survives termination hereof.

- d. The Servicers may be required to transfer settlement funds to your Settlement Account by bank wire transfer for reasons beyond the control of Servicers, in which case Merchant will be assessed a wire transfer fee for each such transfer.

13. Merchants Bank Accounts.

- a. Merchant shall maintain the Settlement Account and the Service Account and is solely responsible for all fees, costs and expenses incurred in connection with the Settlement Account and Service Account. Merchant may not change its Settlement Account or Service Account without the prior written consent of the Servicers. The Servicers may charge the Account Change Fee listed on the Fee Schedule for considering the Merchant's request.
- b. Merchant authorizes PSiGate to debit the Settlement Account in accordance with the Settlement Account PAD Agreement for the Card Fees, any Chargebacks, any returns and refunds, erroneous deposits therein, and any other amounts assessed by the Card Association that the Servicers are permitted to pass through to you pursuant to this Agreement and any other liabilities of Merchant to Servicers hereunder. Merchant agrees to work with PSiGate to help resolve any problems in crediting/debiting the Settlement Account.
- c. Merchant authorizes PSiGate to debit the Service Account in accordance with the Service Account PAD Agreement for the Other Fees. Merchant agrees to work with PSiGate to help resolve any problems in crediting/debiting the Service Account.
- d. Servicers may elect to invoice you for any Fees or other amounts payable by you under this Agreement rather than debit your Settlement Account or Service Account. If you receive an invoice from the Servicers, any amounts due shall be payable within 30 calendar days of the date of such invoice, or on such earlier date as may be specified on the invoice, in the manner specified on the invoice.
- e. If an invoice remains unpaid 30 days after the due date, or if your payment is dishonoured (returned NSF or rejected), the Services may be suspended and you will be liable for a reconnection fee (pursuant to the Fee Schedule). Suspension of Services shall not relieve you of your obligation to pay any and all past due Fees. You will also be responsible for any collection or legal costs incurred by Servicers to collect any overdue or dishonoured payment. Suspended Services may be resumed upon receipt of full payment of all amounts due plus the reconnection fee.

14. **Fraud, Collection Risk and Taxes.** Merchant will bear all risk (including, without limitation, collection risk in respect of card fraud and any other type of credit fraud or Merchant disputes including Chargebacks) with respect to sales of its products or services and will bear all responsibility and liability for the proper payment of all taxes which may be levied or assessed (including, without limitation, sales taxes) in respect of sales of its products or services. The terms of this Section shall survive termination of this Agreement.

15. **Merchant Responsibility to Cardholder.** Merchant is responsible for ensuring that the Cardholder understands that the Merchant is responsible for the Transaction, including for the performance of the terms and conditions of the Transaction and for providing customer service in relation to the Transaction, including dispute resolution. Merchant must inform Cardholders prominently and unequivocally of the identity of the Merchant at all points of interaction.

16. **Transaction Records.** You shall keep all Transaction Records for two years, even if such time period expires following the termination of this Agreement, or longer if required by applicable law. You shall provide PSiGate with copies of Transaction Records upon request. The terms set forth in this Section 16 shall survive termination of this Agreement.

17. Chargebacks & Card Association Compliance.

- a. The Servicers, Visa, Mastercard and the issuing banks of the Card Associations all have the right to chargeback any credit or debit Transaction processed through the Services to the extent that such Transaction is presented or processed in violation of the applicable Rules, this Agreement or where the Cardholder disputes the Transaction pursuant to the applicable Rules. Merchant shall be

responsible for any such Chargebacks and PSiGate is authorized to deduct Chargeback amounts from your Settlement Account in accordance with this Agreement. In the event of an overdraft in the Settlement Account or Service Account for any reason, Merchant shall immediately deposit an amount sufficient to cover any overdraft and any related service charges or fees.

- b. You are ultimately responsible for the Transactions you process. The Card Associations may impose fees, fines or penalties if your Chargeback volume or the number of Transactions you process on fraudulent or counterfeit Cards is excessive. You agree that you are responsible to reimburse the Servicers for the amount of all fees, fines or penalties levied as a result of these Transactions. You will cooperate with the Servicers to determine why your Chargeback volume or the number of Transactions processed on fraudulent or counterfeit Cards is excessive and to implement measures to reduce the volume. The Servicers may terminate access to the Services if the Chargeback volume or the number of Transactions processed on fraudulent or counterfeit Cards is excessive and/or exceeds Card Associations' accepted levels.
- c. The parties agree to cooperate in the appeal of any non-compliance notices received from the Card Associations, including any notice claiming breach of the Rules by provision of the Services ("**Non-Compliance Claim**"). In the event that a Servicer receives a Non-Compliance Claim, the Servicer shall promptly give written notice to the Merchant and the parties shall meet to discuss the Non-Compliance Claim and work together to settle the matter. Notwithstanding the foregoing, the final resolution or disposition of any Non-Compliance Claim as between the Servicers and the Merchant shall be at the sole and absolute discretion of the Servicers.
- d. The Merchant is responsible for, and shall pay to the Servicers on demand, any fees, fines or penalties imposed upon the Servicers by a Card Association with respect to, or resulting from, the acts or omissions of the Merchant.

18. **Gateway Services.** If Merchant has requested one or more Gateway Services from PSiGate, the provisions of Article D of this Agreement shall apply to such services. If Merchant has not requested any Gateway Services from PSiGate but is authorized to accept and process Card Not Present Transactions through a third party payment gateway, Merchant must inform Servicers of such third party payment gateway, any processing software, shopping cart, Web Site host, or other service provider (collectively "**Third Party Gateway Service Providers**"). Any third party payment gateway must be approved by Servicers and Merchant is prohibited from transmitting any Cardholder Data to any Third Party Gateway Service Providers (or any third party) without the approval of Servicers. If Merchant accepts Card Not Present Transactions without such approval, Servicers may, in addition to any other rights they may have under this Agreement, establish a Chargeback reserve account to protect them from risk of loss.

19. **Debit Transactions.** In respect of all debit Transactions, Merchant agrees as follows:

- a. to provide to PSiGate the information required to complete PSiGate's security compliance certification program, as required by the Interac Association; and
- b. to respond to any tracing request for an Interac debit transaction in accordance with IDP 5 (Interac Operating Regulations - IDP 5-Transaction Settlement, Settlement Agents and Dispute Resolution).

20. **Visa Debit Transactions.** In respect of all Visa debit Transactions, Merchant agrees as follows:

- a. Any transaction on a Visa debit Card by a Merchant that has elected to not accept Visa debit Cards or where the Cardholder has elected to not carry out a Visa debit Card transaction, shall be deemed an improper use of the Services and shall not be a Transaction for the purposes of this Agreement; and
- b. Foreign Visa debit Card Transactions are handled in the same manner as domestic Visa debit Card Transactions whether they be PIN or swipe.

21. **Additional Terms.** Additional terms that apply specifically to Card Present Transactions and Card Not Present Transactions are set out in the Attachments to this Agreement as follows:

- a. Attachment 1 – Additional Terms Applicable to Card Present Transactions
- b. Attachment 2 – Additional Terms Applicable to Card Not Present Transactions

Article C – Intellectual Property

22. PSiGate grants Merchant a non-exclusive, non-transferable, royalty-free, revocable, limited sub-license to use (but not the right to sublicense) the Software for the term of this Agreement for the sole and limited purpose of submitting Transactions to PSiGate for processing and/or for otherwise accessing the Gateway Services, if applicable. PSiGate represents and warrants that it has all necessary right, title and interest to provide you this license.
23. Merchant acknowledges and agrees that PSiGate and its licensors are the sole owners of all right, title and interest in and to the Software. Merchant shall not commit any act that might prejudice or adversely affect the validity of such ownership.
24. Merchant shall not reverse engineer, decompile, disassemble, translate, modify, decompile or disclose to any third party the Software nor shall it do so to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listing for the Software. Merchant shall have no right to use, market, distribute, sell, sub-license, deliver or otherwise transfer the Software or any part thereof either for or to any third party. Merchant shall not alter any trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Software or any part of any of them, or any of their supporting materials, documentation or packaging. Any future additions, modifications, versions, upgrades or updates of the Software released to Merchant shall be deemed to be part of the Software, shall be licensed to the Merchant under the terms of Section 22, and the Software shall benefit from the restrictions set out herein.
25. Merchant shall not directly or indirectly (and shall not knowingly cause or permit anyone to) reproduce or prepare any derivative work based upon the Software or any other proprietary information belonging to PSiGate. Merchant agrees to secure and protect tangible forms of the Software so as to maintain the rights of PSiGate and its licensors.
26. PSiGate may from time to time release Software updates. If PSiGate notifies you regarding a Software update, you must integrate such update in the timeframe and manner notified by PSiGate in order to preserve the timely provision of the Services. The Servicers will not be responsible for any failure of the Services if such failure is a result of the Merchant's failure to integrate a Software update in accordance with PSiGate's notification. PSiGate shall not have any obligation to provide support or services for any outdated version of the Software.
27. PSiGate shall be entitled to create, distribute and sub-license aggregate statistical and database compilations derived from Merchant data and Cardholder Data, such as demographics, site traffic, viewing and navigation patterns, and transaction characteristics.
28. Merchant's use of the Card Association trademarks must comply with all applicable requirements of the Rules. Merchant's use or display of such trademarks must terminate upon termination of this Agreement or upon notification by the Card Associations that Merchant must discontinue such use or display. Nothing in this Agreement shall grant any right to Merchant in any name, mark or trademark of any Card Association or the Servicers.
29. Merchant agrees that the Servicers may refer to Merchant by trade name and trademark and may describe Merchant's business in marketing materials, press releases, announcements and web sites. Merchant grants each of Peoples Trust and PSiGate a limited license to use any Merchant trade names and trademarks solely in connection with the rights granted to Peoples Trust and PSiGate pursuant to this Section. All goodwill associated with Merchant's trade name and trademarks will inure solely to Merchant.
30. Merchant may display the slogan "Enabled by PSiGate", or any other PSiGate slogans together with the PSiGate logo, or any other PSiGate trademark or service mark or logo, on Merchant's web site or marketing literature only after obtaining PSiGate's written approval. All goodwill associated with PSiGate's trade name, trademarks, slogans and logos will inure solely to PSiGate.

Article D – Gateway Services

The provisions of this Article D – GATEWAY SERVICES apply only if Merchant requested one or more Gateway Services in the Application.

31. Merchant Platform.

- a. PSiGate acknowledges and agrees that the Merchant and its licensors are the sole owners of all right, title, and interest in and to the Merchant Platform. Merchant shall not commit any act that might prejudice or adversely affect the validity of such ownership.
- b. PSiGate shall not reverse engineer, decompile, disassemble, translate, modify, decompile or disclose to any third party the Merchant Platform nor shall it do so to ascertain, derive, and/or appropriate for any reason or purpose, the source code or source listing for the Merchant Platform. PSiGate shall have no right to use, market, distribute, sell, sub-license, deliver or otherwise transfer the Merchant Platform or any part thereof either for or to any third party. PSiGate shall not alter any trademarks, trade names, logos, patent or copyright notices, or other notices or markings, or add any other notices or markings to the Merchant Platform or any part of any of them, or any of their supporting materials, documentation or packaging. Any future additions, modifications, versions, upgrades or updates of the Merchant Platform released to PSiGate shall be deemed to be part of the Merchant Platform and shall benefit from the restrictions set out herein.

32. **Right of Use and Support Services.** The Gateway Services shall be used by Merchant solely for its internal business and in accordance with all other provisions herein. Upon request, PSiGate will provide Merchant with the following support in connection with the Gateway Services:

- a. training on the use of the Gateway Services and answering Merchant's questions regarding the use of the Gateway Services;
- b. temporary and/or permanent solutions to any reported and documented errors in the Software;
- c. providing assistance with the set-up and integration of the Merchant Platform with the Software in order to access the Gateway Services ("Integration");
- d. Integration testing; and
- e. facilitating Transaction processing.

33. **Integration with Merchant Platform.** Other than the support services to be provided by PSiGate as described in Section 32 above, Merchant is responsible for all technical support for the Merchant Platform and for any Integration related issues. You agree that you will use best efforts to complete the Integration as soon as possible. You will be responsible for all of your own development and implementation costs associated with such Integration. Notwithstanding any other provision of this Agreement, you acknowledge that unless and until you complete the Integration, PSiGate will not be responsible for providing the Gateway Services.

34. **Shut Downs.** The Gateway Services may be temporarily unavailable from time to time, without prior notice to Merchant, in order for PSiGate to perform maintenance and/or upgrades. Such periods of unavailability shall not exceed five minutes during business hours without prior notification to you.

35. **Limitations.** PSiGate may, without notice, suspend Merchant's access to the Gateway Services if at any time the Card Acceptance Services have been suspended or if PSiGate reasonably believes that a Threatening Condition exists. The right of the Merchant to use the Gateway Services shall terminate on any termination of this Agreement.

Article E – General Provisions Regarding Services; Fees; Amendments

36. The Servicers agree to provide the Services in accordance with the terms of this Agreement, the User Documentation, the Rules and applicable law. The parties agree that the Servicers may perform any or all of their obligations and/or responsibilities under this Agreement through one or more affiliates or service providers.
37. Prior to activation of the Services, the Servicers shall establish an account in Merchant's name. Provided that Merchant has paid the application fee that was due with the Application, the Services shall be activated for testing. Merchant shall select a personal password and shall not disclose that password except to the Servicers and persons authorized by Merchant to access Merchant's account with PSiGate. Merchant shall be entirely liable for all activities conducted through Merchant's account.

38. PSiGate will provide a development and testing environment to the Merchant for the purposes of testing the Services in accordance with the User Documentation and as may be directed by PSiGate. Upon the Merchant placing the Services into live production, the Merchant agrees that the Services are satisfactorily performing in accordance with the User Documentation.
39. If there is a failure in the Services to conform to the User Documentation, Merchant shall notify the Servicers of the failure. The Servicers will confirm receipt of such notification and Merchant's sole remedy for the failure shall be that the Servicers will rectify the failure within thirty days of confirming receipt of the Merchant's notification. If Servicers do not cure the failure within that time period, Merchant may terminate this Agreement upon written notice to the Servicers in accordance with Article F – Term and Termination.
40. Merchant agrees to fulfill its obligations under this Agreement, and to use the Services, in accordance with the terms of this Agreement, the User Documentation, the Rules as they apply to the Merchant, and applicable law. Merchant acknowledges that it was provided with a copy of the User Documentation which included links to electronic copies of the applicable Rules. Merchant agrees that the User Documentation shall be disclosed only to its employees as are necessary to facilitate the Services, and that Merchant shall not disclose the User Documentation to third parties without the written consent of the Servicers.
41. Merchant is responsible for its employees' actions while in Merchant's employ. Merchant agrees to maintain accurate logs of employee shift and provide these logs (with or without employee names) to Servicers, within 24 hours of a request as part of an investigation of a Card fraud incident.
42. Merchant is solely responsible for all telephone, computer, hardware and software equipment and services necessary to access and utilize the Services.
43. Merchant represents, warrants and covenants, as at the date of this Agreement and at all times during the term of this Agreement, that:
- it does not transmit or store any information, data or material in violation of any applicable international, federal, provincial, state or local regulation or law;
 - it is in compliance with all applicable local, provincial, state and federal laws governing the transmission, storage, production, and/or retrieval of electronic information;
 - it does and will not export, re-export, transfer, or make available, whether directly or indirectly, any regulated item or information provided pursuant to this Agreement to anyone without first complying with all export control laws and regulations which may be imposed by the United States, Canada and any country or organization of nations within whose jurisdiction Merchant operates or does business;
 - it is a single business entity and is not comprised of more than one business unit which:
 - must provide separate financial reports at Merchant's bank;
 - are located at different geographical locations;
 - are listed as separate business units in either Merchant's financial statements or that of Merchant's parent organization; or
 - carry separate financial accountability within the Merchant's organization or by Merchant's bank;
 - all information contained in the Application or any other documents delivered to Servicers in connection therewith is true and complete and properly reflects Merchant's business, financial conditions and principal partners, owners and officers;
 - Merchant holds all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so; and
 - there is no action, suit or proceeding at law or in equity now pending or, to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right or ability to carry on its business as now conducted or adversely affect its financial condition or operations or the entering into of this Agreement.
44. To the extent that Merchant accepts Card Not Present Transactions, Merchant represents, warrants and covenants, as at the date of this Agreement and at all times during the term of this Agreement, that:
- its website complies with all applicable laws;
 - its web pages do not contain, and Merchant does not propagate, distribute, house, process, store or otherwise in any way handle, material that is pornographic, obscene, lewd, lascivious, excessively violent, harassing, harmful, offensive, disparaging or defamatory, or that invades any right of privacy or that infringes upon any intellectual property rights of any person; and
 - it has only one web storefront.
45. **Fees.** In exchange for the Services, Merchant promises to pay Servicers the Card Fees and the Other Fees. Merchant agrees that the Card Fees will be debited from the Settlement Account and the Other Fees will be debited from the Service Account in accordance with Section 13 of this Agreement. Merchant understands that it is solely responsible for the full amount levied by a Card Association for any Card Fees listed on the Fee Schedule as "Pass-through" and that the Servicers will not be responsible for any portion of these amounts. The full amount of any such pass-through Card Fees incurred in any month will be set out on the Merchant monthly statement. Merchant shall be liable to pay for the full month's Card Fees and Other Fees even if the Services are terminated before the end of the month for any reason.
46. **Merchant Discount Rate.**
- The Merchant Discount Rate that we will apply to your Transactions will vary depending on whether the Transaction is a "qualifying" Transaction or a "non-qualifying" Transaction in accordance with the applicable Card Association Rules. A "qualifying" Transaction under the applicable Rules qualifies for the lowest applicable interchange rate set by the Card Association. A "non-qualifying" Transaction under the applicable Rules does not qualify for the lowest applicable interchange rate and is subject to a higher interchange rate, based on various criteria regarding the type of Transaction, as determined by the applicable Card Association and set out in the Rules.
 - We will apply the Qualified Merchant Discount Rate (as listed on the Fee Schedule) to your "qualifying" Transactions.
 - For your "non-qualifying" Transactions, we will apply the Qualified Merchant Discount Rate plus the Non-Qualified Adjustment (as listed on the Fee Schedule). You will also be charged an Interchange Differential which, for any given "non-qualified" Transaction, means the difference between (i) the interchange level at which such Transaction was actually processed by the relevant Card Association, and (ii) the lowest applicable interchange rate set by that Card Association.
 - The combined total of your Card Fees, including the Merchant Discount Rate and any Interchange Differential that applied to your Transactions in any month will appear on the Merchant monthly statement.
47. **Fee Changes.**
- The Fees for Services are based upon assumptions about the Merchant's business, anticipated annual volume and average transaction size. These assumptions are based on information provided by the Merchant in the Application. If the actual volume or average transaction size are not as expected, or if you significantly alter your method of doing business, Servicers may adjust your Merchant Discount Rate and upon 90 days advance notice.
 - Servicers may increase and/or implement new Fees for Services for any other reason by notifying you 90 days prior to the effective date of any such change.
 - The Servicers will also provide you with a minimum of 90 days advance notice of any increase or decrease in any applicable interchange rate, assessments or other fees charged by a Card Association, or to pass through increases charged by third parties for on-line communications and similar items.
 - Following receipt of a notice from Servicers regarding a new or increased Fee, Merchant will have the right to terminate this Agreement without penalty within 90 days of receiving such notice.
 - Following receipt of a notice from Servicers regarding a decrease in any applicable interchange rate, if Servicers do not pass-through the full savings from any such decrease to the Merchant, Merchant will have the right to terminate this Agreement without penalty by providing Servicers notice within 90 days of the effective date of the decrease in interchange rate.

- f. Any notice provided under this Section will be sent to Merchant's email or business address on record, in accordance with the "Notices" Section below, and will also be posted to psigate.com.
- g. If Merchant does not exercise a termination right following receipt of notice of a new or increased Fee or a decrease in an applicable interchange rate, all such adjustments shall be Merchant's responsibility to pay.
- h. The Merchant's termination rights in this Section 47 do not apply to any Fee increase that is made in accordance with a pre-determined fee schedule provided to Merchant.

48. Amendments Other Than Fee Changes. The Servicers reserve the right to amend any term of this Agreement, and any aspect of the Services, other than the Fees, upon 30 days advance notice to Merchant. A notice of change as provided in this Section shall be considered to have been given upon electronic posting on PSiGate's network at psigate.com for a period of seven consecutive days. Any such amendments shall take effect on the effective date stated in the notice. Merchant is responsible for checking PSiGate's network regularly for any such notifications.

49. Data Security.

- a. Merchant shall ensure that all Cardholder Data is processed and maintained in compliance with this Agreement, PCI DSS procedures and regulations, any other requirements mandated by a Card Association and any applicable law ("**Security Standards**"). Merchant shall report any non-compliance immediately to Servicers. The Card Associations may impose different compliance requirements on different types and levels of Merchants. The Card Associations may impose restrictions, fines, or prohibit Merchant from participating in Card Association programs if it is determined Merchant is non-compliant with such requirements. Merchant understands that it must be in compliance with data security regulations for its type or level of Merchant as defined by the Card Associations' security procedures as well as complying with general Security Standards. The Servicers will use commercially reasonable efforts to provide Merchant with amended operating procedures outlining the various Card Association requirements with regard to data security, but failure to do so shall in no way diminish the obligation of the Merchant to comply with such requirements, nor shall it be a breach of this Agreement.
- b. Upon the reasonable request of Servicers, Merchant shall provide Servicers with any information the Servicers request for the purpose of verifying that you and/or your third party service providers are complying with all Security Standards. The Servicers may in their sole and absolute discretion, suspend or terminate the Services for any actual or anticipated data security compromise or non-compliance with Security Standards. You will be responsible for any fees, fines or assessments levied by the Card Associations for failing to meet the Security Standards.
- c. Merchant shall immediately notify Servicers of its knowledge or suspicion of any breach in security resulting in unauthorized access to Cardholder Data. Merchant shall provide any assistance that Servicers, the issuing bank of any Cardholder, their regulators and the Card Associations deem necessary to contain and control the incident and to prevent further unauthorized access to or use of Cardholder Data. Such assistance may include, but not be limited to, preserving records and other evidence, compiling information to enable Servicers and the issuing bank, regulators or the Card Associations to investigate the incident and providing assistance and cooperation to facilitate the ability of the issuing bank to: (a) file suspicious activity reports (as applicable); (b) notify their regulators (as applicable); and (c) notify the affected Cardholder (as required). Unless the unauthorized access was due to Servicers' acts or omissions, Merchant shall bear all costs associated therewith, including but not limited to the cost of notifying the affected Cardholder(s).
- d. Despite anything else in this Agreement, Merchant agrees to indemnify and hold Servicers harmless from and against all losses, liabilities, damages and expenses (including lawyers' fees and collection costs) brought by a third party resulting from Merchant's failure to comply with the Security Standards.

Merchant obligations pertaining to Security Standards and Cardholder Data contained in this Agreement, including, without limitation the

obligations set forth in this Section 49, shall survive indefinitely beyond termination of the Merchant Agreement.

50. Protection of Cardholder Data.

- a. The parties acknowledge that the Cardholder Data or certain other information collected, used and disclosed pursuant to this Agreement may constitute personal information pursuant to Privacy Laws and may be regulated by Privacy Laws and other applicable law. The parties agree that any such information will be collected, used and disclosed in accordance with this Agreement and applicable law, including Privacy Laws, and with the privacy codes of the Servicers, and will only be used and disclosed in connection with the Services provided hereunder. Peoples Trust's Privacy Code is available at www.peoplestrust.com/en/legal/privacy-security/ and PSiGate's Privacy Code is available at psigate.com/privacy/.
- b. Merchant may not retain or store magnetic stripe data after a Transaction has been authorized. If Merchant stores any electronically captured signatures of a Cardholder, Merchant may not reproduce such signature except upon the specific request of the Services. Merchant shall store all media containing Cardholder Data, including Transaction Records, in an area limited to selected personnel, and, prior to discarding any such media destroy the media in a manner that renders the data unreadable and unrecoverable.

51. Confidential Information. Each party acknowledges and agrees that in entering into and carrying out the terms of this Agreement, the parties may become aware of the confidential and proprietary information of the other parties, including but not limited to, the terms of this Agreement, the Application, the User Documentation, financial information and other information related to each party's business operations ("**Confidential Information**"). Each party agrees that it will maintain the confidentiality of such Confidential Information, will not use Confidential Information of the other party other than in the performance hereof, and no party shall disclose any such Confidential Information to any other person or entity (other than to those of its employees, agents, contractors and affiliates to whom disclosure is reasonably necessary in furtherance of the performance of this Agreement and who are bound by confidentiality and non-disclosure obligations consistent with the terms of this Agreement). The obligation not to disclose Confidential Information shall not apply to any information which:

- a. at the time of disclosure is already in the possession of the receiving party without breach of any obligation of confidentiality;
- b. is independently developed by the receiving party without reliance on the disclosed Confidential Information;
- c. is or becomes publicly available through no wrongdoing of the receiving party; or
- d. becomes available to receiving party on a non-confidential basis from a person, other than the disclosing party, who is not bound by a confidentiality obligation or otherwise restricted from transmitting the information to the receiving party.

Furthermore, this Section shall not prohibit the receiving party from making legally required disclosures pursuant to subpoena, court order or the order of any other authority having jurisdiction; provided that receiving party shall provide disclosing party with prompt notice, unless prohibited by law or court order, thereof so that disclosing party may see an appropriate protective order or other remedy. If in the absence of a protective order or other remedy or waiver of the terms of this Section, the receiving party determines in its sole discretion that it is required by law, regulation, legal process or regulatory authority to disclose any such Confidential Information, the receiving party may disclose such information upon written notice to disclosing party.

The terms set forth in this Section 51 shall survive termination of this Agreement.

52. Provision of Business Records. At all times during the term of this Agreement, upon a Servicer's request, Merchant shall provide all documentation evidencing Merchant's financial condition as well as other documentation determined necessary by a Servicer, acting reasonably, to verify the information contained in the Application. All financial statements of Merchant that are provided under this Section shall be prepared in accordance with generally accepted accounting principles. Merchant agrees to provide such documentation

within 30 days of the request. In the event Merchant fails to provide the requested documentation, the Servicer who requested the documentation shall be entitled to terminate this Agreement in accordance with Article F.

53. **Audit.** During the term of this Agreement and for two years following termination of this Agreement, Servicers shall have the right to examine Merchant's records, books, systems, controls, processes and procedures for the purpose of verifying Merchant's compliance with the terms and conditions of this Agreement, User Documentation and the Rules. Merchant shall provide to the auditors and personnel of Servicers reasonable access to records and shall cooperate and provide to such auditors, in a timely manner, all such assistance as they may reasonably require in connection with any such audit. Except in the event that Servicers have a reasonable basis to believe that Merchant is in violation of this Agreement, the User Documentation or any Rules, Servicers will provide Merchant at least five days' written notice prior to the date of an audit, the audit will be conducted during Merchant's normal business hours, and audits shall occur no more than twice in any calendar year. The provisions in this Section 53 shall survive termination of this Agreement.

54. **Indemnification, Limitation of Liability.**

a. You agree to indemnify and hold Servicers and their respective officers, directors, members, shareholders, partners, employees, agents, affiliates, subcontractors and representatives harmless from and against any losses, actions, causes of action, claims, demands, costs, liabilities, expenses, damages, sanctions, fines or penalties (including legal fees on a solicitor and client basis) claimed by a third party arising from: (i) any breach of any representation, warranty or covenant or any misrepresentation by you under this Agreement; (ii) you or your employees' or agents' failure to comply with the terms of this Agreement or any requirements of which you are advised from time to time including the Rules and any other requirements of any Card Association or Card issuer; (iii) you or your employees' or agents' fraud, negligence or willful misconduct in connection with Transactions or otherwise arising from your provision of goods and services to Cardholders; (iv) Transactions or the settlement of funds from Transactions or your use of our Services; (v) any third party indemnifications we are obligated to make as a result of your actions (including indemnification of any Card Association or Card issuer); or (vi) any fine imposed by any Card Association on account of any of your acts or omissions. Your indemnification obligations shall include an obligation to assume all legal, audit and investigation fees incurred by the Servicers in relation to this Agreement on account of your acts or omissions or those of your affiliates; or (vii) a breach of the security of any system safeguarding Cardholder Data that results in unauthorized access to Cardholder Data.

b. PEOPLES TRUST AND PSIGATE'S CUMULATIVE LIABILITY FOR ALL LOSSES, CLAIMS, SUITS CONTROVERSIES, BREACHES OR DAMAGES FOR ANY CAUSE WHATSOEVER (INCLUDING BUT NOT LIMITED TO, THOSE ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE APPLICATION AND THE USER DOCUMENTATION) AND REGARDLESS OF THE FORM OF ACTION OR LEGAL THEORY SHALL NOT EXCEED THE LESSER OF (I) \$1,000; OR (II) THE AMOUNT OF FEES RECEIVED BY US PURSUANT TO THIS AGREEMENT FOR SERVICES PERFORMED IN THE PRECEDING 12 MONTHS, WHICHEVER IS LESS. UNDER NO CIRCUMSTANCES SHALL SERVICERS BE LIABLE TO MERCHANT, ANY GUARANTOR OR ANY THIRD PARTY FOR ANY LIQUIDATED, INDIRECT, CONSEQUENTIAL, SPECIAL, SPECULATIVE, LOST PROFITS, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT EVEN IF THE PARTY AT FAULT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. MERCHANT WAIVES ALL CLAIMS AGAINST SERVICERS FOR ANY LOSS, CLAIM, DEMAND, PENALTY, ACTION, DELAY, COST OR EXPENSE (INCLUDING LEGAL FEES) OF ANY KIND UNLESS MERCHANT PROVIDES WRITTEN NOTICE TO SERVICERS OF THE OCCURRENCE THAT GAVE RISE TO THE ALLEGED LIABILITY WITHIN THIRTY (30) DAYS AFTER MERCHANT KNEW OR SHOULD HAVE KNOWN OF THE OCCURRENCE.

c. Subject to the limitation of liability set out above, we agree to indemnify and hold you harmless from and against all losses, liabilities, damages and expenses claimed by a third party resulting from our or our employees' gross negligence or willful misconduct in connection with this Agreement.

d. Despite any other term of this Agreement, the Servicers' liability for any delay in transferring settlement funds to you for any reason will be limited to interest computed from the date that you should have received such funds pursuant to this Agreement.

55. **Disclaimer.** THE SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND "AS AVAILABLE" BASIS WITH ALL FAULTS AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AND EFFORT IS WITH MERCHANT. SUBJECT TO APPLICABLE LAW, THIS DISCLAIMER OF WARRANTY EXTENDS TO MERCHANT AND ALL USERS OF MERCHANT'S GOODS AND SERVICES AND IS IN LIEU OF ALL WARRANTIES AND CONDITIONS WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT WITH RESPECT TO THE PRODUCTS AND SERVICES, AS WELL AS ANY WARRANTIES THAT THE SERVICES OR THAT THE OPERATION OF THE SERVICES WILL BE INTERRUPTION OR ERROR FREE, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. Sections 54 and 55 shall survive termination of this Agreement.

Article F – Term and Termination

56. This Agreement shall take effect on the Effective Date and shall have an initial term of three years (the "Initial Term"). Unless otherwise terminated by any party in accordance with the terms of this Agreement, the Agreement will automatically renew for successive six-month terms (each, a "Renewal Term").

57. If Merchant wishes to terminate this Agreement at the end of the Initial Term or Renewal Term, it may provide notice of non-renewal to the Servicers at any point during the Term, up to 90 days prior to the expiry of the Term.

58. Servicers may terminate this Agreement at any time and for any reason, during the Initial Term or any Renewal Term, upon giving Merchant 30 days' written notice.

59. Servicers may terminate this Agreement immediately and without notice in the event that:

- a. Merchant commits a material breach of this Agreement, the User Documentation or the Rules which remains uncured 30 days after Merchant has been notified of the breach in writing by a Servicer, except that no cure period will be permitted for termination based on Merchant fraud or failure to fund the Reserve Account;
- b. Merchant revokes its consent to debit the Settlement Account under the PAD Agreement;
- c. Merchant files a petition in bankruptcy, files a petition seeking any reorganization, arrangement, composition or similar relief under any law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors;
- d. a receiver, trustee or similar officer is appointed for the business or property of Merchant;
- e. any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Merchant and is not stayed, enjoined or discharged within 60 days;
- f. Merchant adopts a resolution for discontinuance of its business or for its dissolution; or
- g. Servicers determine that Merchant has created or is likely to create any harm or loss of goodwill to Servicers or the Card Associations.

60. Servicers reserve the right to terminate any Merchant account on which no activity has occurred for a period of at least 6 months. Servicers reserve the right to remove and destroy any data stored in any Merchant directory upon termination of Merchant account.

61. In the event that PSiGate reasonably believes that a Threatening Condition exists, PSiGate will provide Merchant with notice of the Threatening Condition, upon receipt of which Merchant agrees to exercise its best efforts to cure the Threatening Condition. If in PSiGate's

sole discretion, the Threatening Condition poses an imminent or actual threat to the Software, Merchant agrees to suspend any and all activity on its account until such threat is cured. Notwithstanding the foregoing, Servicers may thereafter deactivate Merchant's account without notice until the threat is cured if Merchant does not itself suspend activity.

62. When this Agreement ends:

- a. Merchant is still responsible for paying any amounts owed to the Servicers under this Agreement;
- b. the terms of this Agreement will remain in effect for any Transactions submitted to the Servicers before the termination date;
- c. without limiting the generality of the previous paragraph, PSiGate's right to debit the Settlement Account and Service Account will survive termination until such time as all credits and debits permitted by this Agreement and the PAD Agreement and related to Transactions submitted to the Servicers before the termination date have been made;
- d. your rights to accept Transactions and submit Transactions for processing, your license to use the Software and your right to use any trademarks, all as outlined in this Agreement, will be terminated; and
- e. Servicers may withhold and discontinue the disbursement for all Transactions in the process of being collected and deposited and Servicers may, without notice to Merchant, refuse to accept or revoke acceptance any Transaction Record or credit voucher or the electronic transmission thereof, if applicable, received by Servicers Trust on or any time after the occurrence of any event of default; and
- f. If applicable, Merchant must return any POS Material in its possession to PSiGate.

63. Within 15 business days of the date of termination of this Agreement, the Servicers will pay you all settlement funds owing to you under this Agreement less a holdback equal to any outstanding, potential or anticipated Chargebacks and Fees and other amounts which may be or become payable pursuant to the terms and conditions of this Agreement after its termination. The holdback will be used to settle any outstanding Chargebacks and Fees and any other adjustments received in the 180 days after termination and the unused portion of the holdback will be paid to you no later than 190 days after termination. If the holdback is insufficient to cover all Chargebacks, Fees and other adjustments received in the 180 days after termination, you agree to pay any deficiency to the Services promptly on demand.

All obligations of Merchant for Transactions prior to and after termination (including payment for Chargebacks and Servicers' expenses relating to Chargebacks) and all rights and obligations set forth in Sections 62 and 63 shall survive termination.

Article G – Reserve Account

64. At any time and for any reason (including, without limitation, notice of termination or actual termination of this Agreement, change in transaction volume, change in business model, unauthorized Transactions, cessation of business, insolvency, excessive Chargebacks, suspected or actual fraud, or competing claims regarding funds generated via Merchant's processing activities), the Servicers may require Merchant to transfer funds to Servicers to be held in a non-interest bearing account maintained at Peoples Trust (the "**Reserve Account**") to serve as collateral to protect Servicers against actual or contingent liabilities or losses that might be incurred by Servicers in the event Merchant is unable or fails to pay Chargebacks, Fees, adjustments and other charges and obligations due or anticipated to become due to Servicers hereunder.

65. The initial amount to be held in the Reserve Account and any subsequent increases in funding will be set by Servicers, in their sole discretion. The Reserve Account must be fully funded by Merchant upon five business days' notice to Merchant, or immediately in the following instances:

- a. suspected or actual fraud,
- b. suspected or actual breach of this Agreement by Merchant,
- c. notice of termination or actual termination,
- d. unauthorized Transactions, or
- e. cessation of business, or suspension of the Services under this Agreement.

66. Servicers may, without notice, fund the Reserve Account (whether initially or due to increased funding requirements) with deductions from settlement funds due to Merchant or by a charge against the Settlement

Account or any other available account of Merchant. Servicers will hold or be entitled to hold the funds in the Reserve Account until such time as Servicers are satisfied that Merchant has no further obligations to Servicers under this Agreement. Merchant's failure to fund the Reserve Account (whether initially or due to increased funding requirements) will result in immediate termination of this Agreement.

67. To secure Merchant's obligations to Servicers under this Agreement and any other agreement for the provision of related equipment or related services (the "**Obligations**"), Servicers reserve the right to require that the Merchant grant to Servicers a first priority lien and security interest in and to and pledges (or hypothecates with delivery) any of Merchant's funds credited to the Settlement Account or Reserve Account or otherwise pertaining to the Transactions contemplated by this Agreement now or hereafter in the possession of Servicers, whether now or hereafter due or to become due to Merchant from Servicers (the "**Pledged Funds**"). For the purposes of the laws of Quebec, Merchant expressly consents to the Pledged Funds securing the Obligations and acknowledges that Servicers have obtained control of the Pledged Funds. Any such funds, money or amounts may be commingled with other funds of Servicers, or, in the case of any funds held pursuant to the foregoing paragraphs, with any other funds of other customers of Servicers. In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, Servicers are hereby authorized by Merchant at any time and from time to time, without notice or demand to Merchant or to any other person (any such notice and demand being hereby expressly waived), to set off, recoup and to appropriate and to apply any and all such funds against and on account of Merchant's obligations to Servicers under this Agreement and any other agreement with Servicers for any related equipment or related services, whether such obligations are liquidated, unliquidated, fixed, contingent, matured or unmatured.

68. If Servicers require Merchant to grant a security interest pursuant to Section 67, Merchant agrees to duly execute and deliver to Servicers such instruments and documents as Servicers may reasonably request to perfect and confirm the lien, security interest, right of set off, recoupment and subordination set forth in this Agreement. Upon request by Merchant, Servicers shall provide an accounting in reasonable detail of all amounts set off or recouped pursuant to this Section and the Obligations toward which such amounts were appropriated or applied.

The provisions in this Article G survive termination of this Agreement until Servicers, in their discretion, terminate the Reserve Account.

Article H – Miscellaneous

69. Complaints.

- a. If you have a complaint regarding PSiGate's or Peoples Trust's compliance with the Code of Conduct for the Credit and Debit Card Industry in Canada (the "Code") you may submit a Code complaint form available at www.peoplestrust.com/en/about-us/resolving-your-concerns/. The Servicers will respond to all Code complaints in accordance with their Code complaint procedures (also available at the above link), a summary of which we have provided to you.
- b. If you have a non-Code complaint in respect of the Servicers you should contact the representative at the Servicer who you regularly deal with to discuss your complaint. If that person is unable to resolve the matter to your satisfaction, ask to speak with the manager or team leader of the business area.
- c. Any non-Code complaint not resolved using the above process should be forwarded to the Chief Compliance Officer of Peoples Trust at the address provided in the "Notices" Section below. If the non-Code complaint remains unresolved, you have the right to refer it to the Ombudsman for Banking Services and Investments, a third party dispute resolution agency at the address below:
401 Bay Street, Suite 1505
P.O. Box 5
Toronto, Ontario M5H 2Y4 Canada
ombudsman@obsi.ca
- d. Pursuant to the *Trust and Loan Companies Act* (Canada), if you have a complaint in respect of Peoples Trust relating to a deposit account, the complaint may be communicated in writing to:

Financial Consumer Agency of Canada
6th Floor, Enterprise Building
427 Laurier Ave. West
Ottawa, Ontario K1R 1B9 Canada
or through its website at
fcac-acfc.gc.ca

70. **Setoff Rights.** The Servicers shall have the right, at any time and without notice, to charge back to Merchant, and deduct, withdraw or set-off from payments due Merchant from Card transactions, or from the Settlement Account, the Reserve Account, any other account or amounts due Merchant the full amount of any Transactions designated by the Servicers or a Card Association or which fails to meet the requirements of this Agreement.
71. **Change in Business.** The Merchant agrees to provide the Servicers with immediate written notice of any changes to the Merchant's business or the manner in which the Merchant carries on business that may reasonably impact the Services provided under this Agreement. For greater certainty, the changes contemplated by this Section include without limitation, a corporate reorganization, a change of control, a refinancing of any debt, volume in excess of your approved annual transaction volume, and/or any change to the core business for which you use the Services.
72. **Relationship Between the Parties.** The parties shall perform all of their duties under this Agreement as independent contractors. Nothing contained herein will be deemed to create any other relationship between the parties. It is agreed that no party will represent itself to be the agent, principal, joint venturer, co-owner, partner, employer or employee of another party. The parties agree that, except as specifically provided in this Agreement, no party grants any other party the power or authority to make or give any agreement, statement, representation, warranty or other commitment on behalf of another party, or to enter into any contract or otherwise incur any liability or obligation, express or implied, on behalf of another party, or to transfer, release or waive any right, title or interest of such another party.
73. **Assignment.** This Agreement is binding on the parties and their successors and assigns. This Agreement may not be transferred or assigned by Merchant and any attempts by Merchant to assign any of its rights or delegate any of its duties hereunder shall be null and void.
74. **Authority.** Each party warrants and represents that its signatory has been and is on the date of this Agreement duly authorized by all necessary corporate action to execute this Agreement.
75. **Invalidity of Provisions.** Each of the provisions in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction in the Province of Ontario will not affect the validity or enforceability of any other provision hereof.
76. **Severability.** If any provision of this Agreement shall be held illegal or unenforceable, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.
77. **No Waiver.** The waiver by any party of a breach of any provision contained in this Agreement shall be in writing and shall in no way be construed as a waiver of any subsequent breach of such provision or the waiver of the provision itself.
78. **Entire Agreement.** This Agreement including Attachments, the Application, the Fee Schedule and the User Documentation make up the entire agreement between the parties and replace all previous agreements, arrangements and understandings between the Merchant, Peoples Trust and/or PSiGate concerning its subject matter. Each party agrees that no other party has made any representations, warranties or agreements of any kind, except as expressly set forth in this Agreement.
79. **Headings.** The headings in this Agreement are intended for convenience of reference and shall not affect the interpretation of the Agreement.
80. **Force Majeure.** The Servicers shall not be responsible for any failure to perform their obligations under this Agreement if such failure is caused by acts of God, war, strikes, revolutions, lack or failure of transportation facilities, laws or governmental regulations or other causes that are beyond the reasonable control of the Acquirer.
81. **Governing Law.** This agreement will be governed by the laws of the province of Ontario and the federal laws of Canada applicable in the Province of Ontario. The parties agree that the courts of the province of Ontario will have exclusive jurisdiction over any matters arising from this Agreement.
82. **Publicity.** No party may issue press releases relating to this Agreement without the other parties' prior written consent.
83. **Counterparts.** This Agreement may be executed by facsimile and in counterparts, which taken together shall form one legal instrument.
84. **Notices.** All notices or other communications required to be provided under this Agreement will be in writing and will be delivered in person (by commercial courier, return receipt requested) or by electronic means, addressed, in the case of the Merchant, to the business address or email address provided on the Application, and in the case of either of the Servicers, to the following:
Peoples Trust Company/Payment Services Interactive Gateway Inc.
Attention: PSiGate Merchant Services
1310 - 95 Wellington Street West
Toronto, Ontario, Canada M5J 2N7
1-877-374-9444
merchant.services@psigate.com
85. **Opportunity to Seek Counsel.** The Merchant agrees that it had the opportunity to seek and was not prevented nor discouraged by the Servicers from seeking independent legal advice prior to the execution and delivery of this Agreement and that in the event that Merchant did not avail itself of that opportunity prior to the signing of this Agreement, Merchant did so voluntarily without any undue pressure and agrees that Merchant's failure to obtain independent legal advice shall not be used by Merchant as a defense to the enforcement of its obligations under this Agreement.
86. **Language.** APPLICABLE TO THE PROVINCE OF QUEBEC ONLY:
It is the express wish of the parties that this Application and any related documents be drawn up and executed in English. Les parties conviennent que la présente autorization et tous les documents s'y rattachant soient rédigés et signés en anglais.

ATTACHMENT 1**ADDITIONAL TERMS APPLICABLE TO CARD PRESENT TRANSACTIONS**

Definitions used in this Attachment:

“**PED**” means a device used to enter, store and act upon a PIN and which enciphers the PIN within the device.

“**POS Material**” means point of sale marketing material provided to Merchant by the Servicers.

1. **All Card Present Transactions.** In respect of all Card Present Transactions, Merchant agrees as follows:
 - a. to provide adequate protection against disclosure of a Cardholder’s PIN during its entry in a Transaction and exercise care and diligence in protecting the confidentiality of Cardholder’s PIN;
 - b. to locate PEDS so as to minimize the possibility of disclosing the PIN of a Cardholder during a Cardholder’s entry of his/her PIN in a Transaction;
 - c. not to ask a Cardholder for his/her PIN at any time;
 - d. not to require or disclose a Cardholder’s PIN in clear text form;
 - e. not to take knowledge or any record of the PIN of any Cardholder;
 - f. not to install or permit to be installed any camera or other device that, by any means, records PINs or any information on a Card.
 - g. to keep the Merchant’s copy of the Transaction Record issued for each Transaction at the Merchant’s retail store location for a least one calendar year from such Transaction. Merchant must present a copy of a requested Transaction Record within 30 days of request date (or any shorter time period as may be required by the applicable Rules);
 - h. Sales receipt will be presented to Card Issuer, and it is at their discretion to reimburse funds;
 - i. to take all reasonable precautions to protect information encoded on a Card while it is being used for a Transaction;
 - j. to respond to and rectify all Cardholders inquiries, complaints or disputes about the availability, quality, receipt, price and satisfaction of the purchased goods or services, or the amount of a Transaction;
 - k. to allow a Cardholder to retain a copy of his/her Transaction Record;
 - l. where any PED is not equipped with a built-in card swiping feature, to require that Merchant only permit such PED to be used for debit transactions and to ensure that they are not tampered with in any way;
 - m. to ensure that PEDS assigned to a specific retail location remain at the assigned location and that faulty PEDS are returned to the maintenance service provider for diagnostics and repair once a replacement PED-arrives at the assigned location;
 - n. not to relocate the PEDS from the original location address without requesting the right and receiving PSiGate’s prior written approval to relocate;
 - o. to provide to PSiGate, at any time during the regular business hours of operation for all Merchant locations, with access to the PEDS and the terminal to verify the integrity of the software, firmware, hardware and compliance with the terms contained herein;
 - p. to display the POS Material at Merchant’s location in the manner prescribed and not to copy or duplicate such POS Material without PSiGate’s prior written authorization. Notwithstanding the foregoing, Merchant acknowledges and agrees that the obligation to display the POS Material shall not be interpreted as the granting of any license (including a trade-mark license) to use the Mark of any Card Association;
 - q. to display the POS Material on its store front or alternate visible location and such material shall be displayed no less prominently than any other signage or Mark of any other financial service trademark; and
 - r. to acknowledge that such right to use the POS Material does not convey or confers any right, titles or interest in any Card Association Mark.
2. **POS Terminal.** You are responsible for any use made of your points of sale terminal. You shall immediately inform PSiGate if your point of sale terminal is not functioning normally. PSiGate is permitted to presume that all Transactions initiated on your point of sale terminal have been authorized by you and the Cardholder of the Card used for the Transaction. You assume full and exclusive responsibility for any use of the passwords or access codes to your point of sale terminal and to the Software. You undertake to change such passwords from time to time.

ATTACHMENT 2**ADDITIONAL TERMS APPLICABLE TO CARD NOT PRESENT TRANSACTIONS**

If Merchant accepts Card Not Present Transactions, the following provisions shall be applicable:

- a. The Transaction Record in respect of any Card Not Present Transaction shall be completed without the Cardholder’s signature but shall include the Cardholder’s name, billing address, Card number, expiration date of the Card, a description of the merchandise or service and the date and amount of all charges.
- b. Merchant shall process Card Not Present Transactions only (a) if such Transactions have been encrypted by Servicers or by a Third Party Gateway Services Provider approved by Servicers and (b) Cardholder Data is protected by Merchant as required by the applicable Card Association Rules, PCI DSS, or any other applicable regulations. Encryption is not guarantee of payment to Merchant.
- c. Merchant acknowledges that Card Not Present Transactions may be authorized and settled through separate BIN/ICA numbers and interchanges than Card Present Transactions and that Servicers may be unable to combine deposits of Card Not Present Transactions and Card Present Transactions.
- d. Card Not Present Transactions are subjected to a higher incidence of Chargebacks and receiving a transaction authorization and following procedures will not relieve Merchant of liability associated with Chargebacks and/or the fraudulent use of Cardholder Data obtained from Merchant’s website.
- e. All communications costs related to Card Not Present Transactions are Merchant’s responsibility. Obtaining any license or sub-license of software required to permit Merchant to process Card Not Present Transactions other than the Gateway Services (if Merchant has requested such Services from PSiGate) shall be Merchant’s responsibility.
- f. Servicers do not guarantee that obtaining required approvals from Servicers or implementing suggested security measures will cause Merchant’s Card Not Present Transactions to be secure, and Servicers will not be responsible in the event of the infiltration of Merchant’s or any Third Party Gateway Service Provider’s security systems.
- g. Merchant further acknowledges and agrees that, if Merchant is receiving gateway services from a Third Party Gateway Service Provider, then Servicers are not responsible for the security of Cardholder Data or other information stored on Merchant’s or any Third Party Gateway Service Provider’s computers, systems or website(s) and that Merchant will be solely responsible for any liability, fines, or penalties arising from its use, storage, or dissemination of Cardholder Data.