

# GivexPay Merchant Agreement - Terms and Conditions CANADA

November 18, 2024

These terms and conditions (“**Terms and Conditions**”) of the GivexPay Merchant Agreement (hereinafter defined) is entered into by the merchant (the “**Merchant**” or “**you**”) whose information appears on the Acceptance Form (hereinafter defined) and GIVEX CANADA CORP. (“**Givex**” or “**Marketplace**”). Givex and Merchant are collectively referred to as the “**Parties**” and each as a “**Party**”.

## RECITALS

Givex provides GivexPay Services (hereinafter defined), including the Givex Platform (hereinafter defined), to merchants in the Territory (hereinafter defined);

Processor (hereinafter defined) is a provider of Processing Services (hereinafter defined);

Givex and Processor entered into an agreement for the provision of payment processing services by Processor;

Merchant wishes to receive the GivexPay Services, including using the Givex Platform, and to use the Processing Services; and

Givex wishes to provide Merchant the ability to use the Processing Services, using and integrated with the Givex Platform, to enable Merchant to accept payments from its Customers (hereinafter defined).

The GivexPay Merchant Agreement (the “**Agreement**”) includes and incorporates by reference (i) the Acceptance Form, (ii) if applicable, each accepted Order Form (hereinafter defined), (iii) this Terms and Conditions, and (iv) all Schedules attached hereto and provided hereunder, as each may be amended, restated, supplemented or otherwise modified from time to time.

**Merchant’s acceptance of the Agreement will occur when you sign the Acceptance Form on Merchant’s behalf. Merchant’s acceptance of any amendment, restatement, supplement or any other modification to the Agreement will occur when Merchant first uses the GivexPay Services following notice of any such amendment, restatement, supplement or modification. Please ensure that you read the Agreement carefully. If you are not able to access and review any part of the Agreement, please contact Givex Customer Support at 1 (800) 962-4935 or support.givex.com.**

## 1. DEFINITIONS; ORDER OF PRECEDENCE

1.1 In this Terms and Conditions, the following terms shall have the following meanings:

“**Acceptance Form**” means the acceptance form for the GivexPay Services setting out: (i) Merchant’s information, (ii) the GivexPay Services, and (iii) the Fees and payment terms, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**Affiliates**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity, or by contract or otherwise.

“**Cancellation Costs**” means the Transaction Cancellation amount and all related costs, fines, service fees, penalties and expenses.

“**Chargeback**” means a transaction that is reversed or charged back to Merchant Bank Account if the transaction: (a) is disputed; (b) is reversed for any reason by one or more Payment Network(s), Processor, a Customer, or Givex’s financial institution; (c) was not authorized; or (d) is unlawful, suspicious or in violation of the terms or conditions of this Terms and Conditions.

“**Confidential Information**” means (i) the terms (but not the fact or existence) of the Terms and Conditions, and (ii) all proprietary, confidential and non-publicly available information provided by or on behalf of each Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), whether before or after the Effective Date hereof, and extends to all confidential, proprietary and non-publicly available information, whether in oral, written, graphical, schematic or electronic form, which may include, but is not be limited to, technical, technological and operational information, customer lists and customer proprietary information, financial information, sales, pricing, costs and business concepts and plans, processes, methods, drawings, samples, devices, demonstrations, trade secrets, know-how, computer systems, hardware and software, results of research, documentation (including Givex Documentation), Intellectual Property, and other proprietary information. Notwithstanding the foregoing, information will not be considered “**Confidential Information**” to the extent, but only to the extent, that such information:

- (a) is already in the possession of Receiving Party at the time such Confidential Information was disclosed by Disclosing Party, as established by sufficient evidence;

- (b) is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by Receiving Party in violation of this Terms and Conditions;
- (c) is or becomes available to Receiving Party, in good faith, on a non-confidential basis from a source other than Disclosing Party, which, to the knowledge of Receiving Party, is not prohibited from disclosing such information by contractual, legal or fiduciary obligation; or
- (d) has been independently developed by Receiving Party without use of the Confidential Information and without violating any of its obligations under this Terms and Conditions.

**“Customers”** means Merchant’s customers or clients who purchase Merchant’s goods or services.

**“Customer Data”** means data and information, which may include Customer Personal Information, collected by or disclosed to Givex via or in connection with the GivexPay Services, such as when a Customer enters payment information, submits an online order, enrolls in a loyalty program, or requests a digital receipt, and may include without limitation: (i) contact information (such as name, phone number, email address, etc.); (ii) information about the transaction; (iii) Payment Card information; (iv) Customer purchase history; and (v) location information.

**“Customer WebSuite (CWS)”** means a customizable, merchant-branded progressive web app (PWA) for online ordering, gift cards, loyalty programs, promotions, etc.

**“Data Privacy and Security Laws”** means all applicable federal, state, provincial, regional and local laws, regulations and rules imposed by any government, agency or authority in relation to the processing and security of Personal Information, including but not limited to the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, the *European Union’s General Data Protection Regulation (GDPR)*, and the *California Consumer Privacy Act of 2018 (CCPA)* as amended, replaced or superseded from time to time.

**“Effective Date”** means the date of this Terms and Conditions written below.

**“Employees”** means Merchant’s employees, agents and contractors who are authorized to use the Services.

**“Feedback”** means suggestions, enhancement requests, ideas, feedback, recommendations or other input about the GivexPay Services, Givex Platform, Givex App (if any).

**“Fees”** means any fees set out in the GivexPay Acceptance Form and Order Form (if applicable), including without limitation, fees for the GivexPay Services.

**“Givex Affiliate”** means any corporation or other entity that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with Givex. The term “control” means the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. The term Givex Affiliate also includes entities that control, are controlled by or are under common control with Givex after the Agreement Effective Date.

**“Givex Apps”** means mobile applications made available by Givex as part of the GivexPay Services, for download by Merchants, Employees or Customers (as applies), that enable Merchants, Employees and Customers to interact with, access and use the Services.

**“Givex Documentation”** or **“Specifications”** means the printed and digital instructions, on-line help files, technical documentation and user manuals for the GivexPay Services provided by Givex to Merchant.

**“GivexPay”** means an integrated payment solution for merchants, powered by Adyen N.V. for platforms.

**“GivexPay Services”** or **“Marketplace Services”** means services provided by Givex that enable Merchant to accept Customers’ Payment Cards as payment for Merchant’s goods or services, and includes the Givex Platform, Givex Apps, supported integrations with third-parties, customer support, and any other current or future services offered by Givex in connection with GivexPay, as further detailed in Schedule A (GivexPay Services) attached hereto.

**“Givex Platform”** means individually and collectively, the GivexPOS Solution, GivexPay Services, and Customer WebSuite (CWS).

**“GivexPOS Equipment”** means the proprietary point-of-sale equipment offered by Givex, which may include a VHub, one or more wireless routers, one or more network switches, one or more tablet computers, and other item(s) of physical hardware made available by Givex, as specified in the Acceptance Form and based on the requirements of the participating location(s).

**“GivexPOS Services”** means order input, customer relationship management and payment processing services offered by Givex.

**“GivexPOS Solution”** means collectively, the GivexPOS Services and GivexPOS Equipment.

**“Givex System”** means the servers, datacenters, computer systems, hardware, software and processes utilized by Givex to perform the GivexPay Services.

**“Go-Live Date”** means the actual date upon which Merchant begins using the Services and is capable of processing Card payments in a live production environment (if applicable).

**“Intellectual Property”** means, without limitation, the trade names, trademarks, patents, patents pending, concepts, ideas, computer hardware, software and systems of each Party, and the Services, Givex System, Givex POS Equipment and Givex Documentation in the case of Givex. Nothing in this Terms and Conditions or otherwise shall give Merchant any right, title to, or interest in the Services, Givex System, Givex POS Equipment and Givex Documentation.

**“Merchant Bank Account”** means an active bank account under Merchant’s control and ownership and under Merchant’s business name, which shall be the account to which all Transaction amounts shall be settled.

**“Merchant Data”** means any files, graphics, images, text, emails, data or other information provided by Merchant in the course of using the GivexPay Services and/or collected by Givex, including without limitation Merchant’s name, address, contact information, Employee information, loyalty program information, transaction details, and other information or material provided by Merchant to Givex through the GivexPay Services, including Customer Data. Merchant data may include Personal Information, whether from Merchant’s Employees, existing customer information or otherwise.

**“Merchant Payment Account”** means a payment account that Givex will, on Merchant’s behalf, instruct Processor to establish for Merchant to be used to account for and settle amounts as part of Merchant’s use of the GivexPay Services and Processing Services.

**“Operating Regulations”** means the collective body of Card brand and payment network by-laws, operating requirements and/or all other rules, policies and procedures, including but not limited to the Payment Card Industry Data Security Standards, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, and any other program or requirement that may be published and/or mandated by a Card brand or payment network.

**“Order Form”** means a Givex order form to be used by Merchant to order GivexPOS tablet computers, as it may be amended, restated, supplemented or otherwise modified from time to time.

**“Payments”** means a Card payment made to Merchant by a Customer.

**“Payment Card”** means most Canada-issued, and most non-Canada issued, credit and debit cards and/or any other card types, if applicable, accepted on a Payment Card Network, of which Givex reserves the right to add or remove at any time in its sole discretion.

**“Payment Card Network”** means an entity that regulates and provides a specific payment card or method, such as, American Express Travel Related Services Company, Inc. (“American Express”), DFS Services, LLC (“Discover”), MasterCard International Inc. (“MasterCard”), Visa Inc. (“Visa”), and/or any other payment card networks that Givex may utilize in its sole discretion.

**“Payment Card Network Rules”** means the collective set of by-laws, rules, regulations, operating regulations, term and conditions, procedures and/or waivers issued and published by the Payment Card Networks as may be amended or supplemented from time to time and with which merchants and payment service providers must comply when using the relevant payment card or method.

**“Personal Information”** or “PI” means any information that relates to an identified or identifiable individual. Depending on the applicable Data Privacy and Security Laws, Personal Information may include, but is not limited to, name, address, contact details, unique identifiers, payment card information, biometric identifiers and information, preferences, history and profile data, IP addresses and location-based information.

**“Personal Information Breach”** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal information.

**“Processor”** means Adyen N.V., its Affiliates, and the acquiring bank.

**“Processing Services”** means payment processing and acquiring services for both Card Not Present (CNP) and Point of Sale (POS), including the acceptance and processing of Transactions (hereinafter defined), Transaction reporting, settlement of funds, and other related services provided by Processor.

**“Representative”** means an authorized representative of Merchant who has the full power and authority to agree to this Terms and Conditions and any other binding documents (such as terms, acceptance forms, order forms, statements of work, etc.) on behalf of Merchant.

**“Reserve”** shall have the meaning set out in Section 3.12.

**“Reversal”** has the meaning set out in Section 3.8.

“**Security Breach**” means any accidental or unlawful destruction, loss, alteration, theft, unauthorized disclosure of, or access to, Personal Information in a Party’s care, custody, or control.

“**Settlement Amounts**” shall have the meaning set forth in Section 3.5.

“**Tax**” means any tax, levy, or duty imposed by taxing authorities.

“**Territory**” means Canada.

“**Transaction**” shall have the meaning set forth in Section 4.2.1.

“**Transaction Cancellation**” has the meaning set out in Section 3.8.

**1.2 Order of Precedence.** In the event of a discrepancy or contradiction between this Terms and Conditions and the Processor Terms, the Processor Terms shall prevail. In the event of an inconsistency between any provision of any terms of this Terms and Conditions or of the Processor Terms and the Payment Card Network Rules, the Payment Card Network Rules shall prevail.

## **2. TERM AND TERMINATION**

**2.1 Term.** If there is an existing Canada Merchant Agreement between the Parties, then Section 2.1.1 shall be the Term of the Agreement (including this Terms and Conditions). If however there is not an existing Canada Merchant Agreement between the Parties, then Section 2.1.2 shall be the Term of the Agreement (including this Terms and Conditions).

**2.1.1 Existing Merchant Agreement.** Merchant and Givex agree that the Agreement (including this Terms and Conditions) commences on the Effective Date and shall be co-terminus with the Canada Merchant Agreement entered into by them. For clarity, the Parties agree that the Agreement shall continue during the currency of the Canada Merchant Agreement and, should that Merchant Agreement expire or be earlier terminated, then the Agreement shall also expire or terminate on the same date.

**2.1.2 No Existing Merchant Agreement.** The Agreement (including this Terms and Conditions) shall commence on the Effective Date and continue for a period of thirty-six (36) months (the “**Initial Term**”). Unless either Party provides the other Party with written notice of termination at least thirty (30) days prior to the expiration of the Initial Term or any successive term, the Agreement will automatically extend for successive twelve (12) month terms (each a “**Renewal Term**”). The “**Term**” shall be defined as the Initial Term and all Renewal Terms, if any.

**2.2 Termination.** The Agreement (including this Terms and Conditions) shall remain in full force and effect unless terminated as provided herein.

**2.2.1 Termination or Suspension by Givex.** Givex may suspend Merchant’s username and password, the Merchant Payment Account, and access to the GivexPay Services, and/or may terminate the Agreement (including this Terms and Conditions) upon written notice to Merchant in the event any of the following occur:

- (i) Merchant fails to make any payment when due;
- (ii) Merchant provides any inaccurate, untrue or incomplete information or fails to comply with the Merchant Payment Account registration requirements, as determined in Givex’s sole discretion;
- (iii) Givex determines that Merchant is incurring excessive Chargebacks, as determined by Givex in its sole discretion;
- (iv) Merchant violates Sections 5.12 (Usage Restrictions);
- (v) Merchant fails to comply with Section 5.2.1 (Restricted and Prohibited Goods, Services, and Transaction Types) in which event termination may be immediate;
- (vi) for any reason upon ninety (90) days’ prior written notice to Merchant.

As determined in its sole discretion, Givex, its payment provider(s), and/or one or more Payment Network(s) may terminate the Agreement (including this Terms and Conditions) immediately and without notice for any reasonably suspected issue(s) that could potentially cause a violation of this Terms and Conditions, the Payment Network Rules, any applicable law or regulation, or may cause a potential security threat, data breach, fraud or other crime, or damage to the Payment Network(s).

**2.2.2 Termination for Material Breach.** A Party (the non-defaulting Party) shall have the right, on written notice to the other Party (the defaulting Party), and without prejudice to any other remedies which the Parties may have under the Agreement, in law or in equity, to terminate the Agreement if the other Party defaults in the performance of any material obligation or is in breach of any representation or warranty under this Terms and Conditions, and such default or breach is not cured within thirty (30) days after written notice thereof has been given to the defaulting Party by the non-defaulting Party. If the subject default or breach has not been cured, the termination will take effect thirty (30) days after the date on which written notice was given by the non-defaulting Party to the defaulting Party.

**2.2.3 Termination for Bankruptcy or Insolvency.** Either Party may terminate the Agreement by written notice to the other Party and may regard the other Party as being in default of the Agreement, if the other Party ceases to conduct business in the ordinary course, makes an assignment for the benefit of creditors, has appointed a receiver or trustee in bankruptcy, or makes a filing under any federal, provincial or state bankruptcy or insolvency law.

**2.3 Transition Period.** Upon written request by Merchant at least thirty (30) days prior to the expiration or termination of the Agreement for any reason other than Merchant's default or breach or under Section 2.2.1, and provided that Merchant has paid all undisputed Fees and charges in full, Givex will provide Merchant with up to ninety (90) days ("Transition Period") of GivexPay Services in transitioning to a payment service provider designated by Merchant ("Transition Services"). The Transition Services shall commence on the expiry or termination date of this Terms and Conditions, or such earlier date following notice of expiry or termination as may be agreed by the Parties. Merchant agrees to pay the applicable Fees and charges as set forth in the Acceptance Form and Order Form (if applicable) for Transition Services received during the Transition Period.

#### **2.4 Effect of Expiration or Termination.**

**2.4.1** Upon the expiration or termination of the Agreement, both Parties shall promptly return any and all Confidential Information of the other Party, including copies and reproductions of such Confidential Information, at the returning Party's sole expense. Notwithstanding the foregoing, each Party shall not be required to return or destroy Confidential Information of the other Party that is contained in an archived computer backup system stored as a result of automated backup procedures in the ordinary course of the receiving Party's business; provided, however, that any such Confidential Information so retained shall remain subject to the confidentiality and non-use obligations contained in this Terms and Conditions.

**2.4.2** Upon any termination or expiration of the Agreement, Merchant's right to access and use the GivexPay Services will terminate. Upon any such termination or expiration, all Sections of this Terms and Conditions which by their nature should survive termination or expiration will survive, including without limitation: Section 1 (Definitions), Section 5.12 (Usage Restrictions), Section 6 (Privacy and Security), Section 7 (Confidential Information), Section 8 (Ownership; Intellectual Property, Merchant Data, Customer Data), rights to any payments of Fees and charges, Section 9.3 (No Additional Representations or Warranties), Section 10 (Indemnity; Limitation of Liability), and Section 11 (General Provisions). Notwithstanding the foregoing, at Merchant's request if received within thirty (30) days of termination of the Agreement for any reason other than termination by Givex for Merchant's default or breach or under Section 2.2.1, to the extent Merchant is otherwise unable to access the information itself, Givex will permit Merchant to access the GivexPay Services only to the extent necessary for Merchant to retrieve a copy of Merchant Data, Customer Data, and any other data, materials, and information collected by the Merchant as part of the GivexPay Services and contained in the Merchant Payment Account. Subject to the Payment Processing Terms, Merchant acknowledges and agrees that Givex has no obligation to retain Merchant Data and that Givex will have the right to irretrievably delete and destroy Merchant Data after thirty (30) days following the termination or expiry of the Agreement. Merchant agrees that it will continue to permit Givex access to the Merchant Bank Account until all amounts due under this Terms and Conditions are paid in full.

### **3. FEES, PRICING AND PAYMENT TERMS**

**3.1 Fees and Pricing.** Merchant and Givex agree to the fees and pricing for the GivexPay Services as set forth in the Acceptance Form and Order Form (if applicable). Without limiting any other rights of Givex, beginning on the one year anniversary following the earlier of the signature date or the Effective Date, Givex shall have a right to increase the aggregate fees payable by Merchant by an amount equal to the greater of (i) the average annual change (expressed as a percentage) for the prior calendar year in the Consumer Price Index for All Urban Consumers - All Items (seasonally unadjusted) (collectively the "CPI-U") plus 1%, or (ii) 4%.

**3.3 Payment Terms.** Fees and any charges will be invoiced in advance on the 1st day of every month. Fees and charges will be deducted from the Merchant Payment Account balance or otherwise in accordance with Section 3.13 (Collection of Debt; Set-Off). All Fees and charges are exclusive of shipping costs and applicable sales, use, or equivalent taxes imposed by any governmental authority having jurisdiction. Givex will apply all applicable sales, use, or equivalent taxes imposed by any governmental authority having jurisdiction on all Fees and charges. Shipping costs, if applicable, will be invoiced to Merchant at cost on a monthly basis. All Fees and charges are non-refundable.

**3.4 Interest.** Any portion of the Fees or charges that is not paid when due will accrue interest at the Bank of Canada prime rate plus four percent (4%) or the highest rate permitted by law, whichever is less, from the due date until paid.

**3.5 Settlement Amount.** All Transaction amounts deducted for applicable Fees shall be allocated to the Merchant Payment Account and held by Processor and its banking partners in pooled accounts. Merchant shall not be entitled to any interest on such amounts or to any right to withdraw them. Subject to the other relevant provisions herein, the positive balance in the Merchant Payment Account reduced by all Transaction Cancellation Costs and any other amount owed by the Merchant to Givex or Processor, or otherwise deducted pursuant to this Terms and Conditions ("**Settlement Amounts**") shall be transferred to the Merchant Bank Account by Processor upon such amounts becoming available for settlement. The settlement schedule will be monthly unless otherwise specified in an accompanying statement of work. If the settlement date is a holiday or a day on which the relevant banks are not operating, the settlement shall be made on the first subsequent business day on which they are open for business. Settlement Amounts will be paid to Merchant only if the Merchant Payment Account is active and in full compliance with this Terms and Conditions and the Processor Terms. Merchant assumes all responsibility and shall have no claims towards Givex in the event of any losses and damages that Merchant or any third-party may incur due to any non-settlement or erroneous settlement of the Settlement Amount, due to Merchant's non-compliance with the terms herein or for providing a wrong Merchant Payment Account. If Merchant leaves any funds dormant in the Merchant Payment Account and Merchant does not give Givex instructions as to where to send them, Givex will act according to the instruction of Processor and applicable law.

**3.6 Withholding & Change of Settlement Schedule.** Givex reserves the right to enforce a holding period prior to the settlement of the Settlement Amounts, change the settlement schedule at any time, including due to the following reasons: (i) excessive or expected excessive Transaction Cancellations of any kind, as determined by Givex in its sole discretion; (ii) in the event that Givex suspects or becomes aware of suspicious activity; or (iii) where Givex is required by law or court order.

Givex will notify Merchant once it exercises its right to withhold the Settlement Amounts. Processor, acquiring banks, or other financial institutions holding the Merchant Payment Account may also require a holding period before the settlement of the Settlement Amounts to the Merchant Bank Account. Givex is not responsible or liable for any delay of Merchant's Settlement Amounts in accordance with this Terms and Conditions or ordered by any third-party.

Givex shall not be responsible or liable for any act or omission of Processor, any of its service providers, or partners, or any financial institutions, with respect to the settlement.

**3.7 Transaction Record.** Except as otherwise required by applicable law, Merchant is solely responsible for maintaining its Transactions records and other data associated with the Merchant Payment Account in accordance with applicable law.

**3.8 Responsibility for Transactions.** Merchant shall be fully responsible for the Transactions, including in relation to any cancellation or cancellation request of a Transaction, including due to a Dispute, Refund of a Transaction, or the reversal or return of a Transaction conducted, facilitated or initiated by Givex, Payment Card Networks, other Processor, or acquiring banks ("Reversal") (a "Transaction Cancellation"). Givex is not responsible or liable to Merchant or any third-party for any Transaction Cancellation and Merchant shall be liable to Givex for the Cancellation Costs associated with a Transaction Cancellation. Givex and Processor shall have the right to deduct Transaction Cancellation amounts and Cancellation Costs from any Settlement Amounts payable to Merchant and in accordance with Section 3.13 hereunder. If Givex is not able to deduct the amounts or otherwise collect such amounts in accordance with Section 3.13, Merchant shall pay the Transaction Cancellation amount and Cancellation Costs immediately upon Givex's first written notice. All Transaction Cancellations must be done through the GivexPay Services and Processing Services and may require the payment of certain service fees as set forth in the Acceptance Form and Order Form (if applicable).

**3.9 Settlements Disputes.** All disputes regarding Settlement Amounts must be filed by the Merchant to Givex in writing, within ninety (90) days following the date of settlement. No disputes or complaints by Merchant shall be accepted after 90 days, and following such period, the settlement of the relevant Transaction shall become irrevocable, irreversible and final.

**3.10 Transaction Cancellation Disputes.** In most cases, Merchant may challenge Transaction Cancellation orders initiated by a Customer (including chargebacks) ("Dispute") through the GivexPay Services and Processing Services by providing information and documentation according to the relevant Payment Card Network Rules. Merchant acknowledges and agrees that Givex will not have any liability with respect to the provision of such services. Merchant further agrees that the information and documentation provided will be shared with Merchant's Customer, its payment providers and other relevant financial institutions. Failure to provide such information and documentation in a timely manner may not allow Merchant to dispute the canceled transaction. Payment Card Networks may either accept or deny Merchant's challenge. Givex and Processor will deduct the Dispute amount from the Merchant Payment Account upon a Dispute, including in accordance with its rights under Section 3.13, and will credit Merchant's account if Merchant's challenge is accepted by applicable issuing and acquiring banks. Merchant acknowledges and agrees that Givex is not a party to the Dispute challenging process.

**3.11 Refunds.** Merchant shall bear all costs and expenses associated with or resulting from any Refund (including any service fees incurred due to the original Transaction, which shall not be refunded). For the purpose hereof, "Refund" means a Transaction Cancellation, which is initiated by Merchant and results in reimbursement to the Customer for all or some of the amounts paid in such Transaction. A Refund of a Transaction shall be subject to the existence of sufficient balance in the Merchant Payment Account, such that it is possible to offset the refunded amount from the Settlement Amounts. Givex and Processor shall have the right to withhold funds in the Merchant Payment Account and/or deduct the associated Refund amount from the Merchant's Settlement Amounts, as required to process and pay Refunds. Givex may further decline any Refund when Givex believes that such an order increases the risk of a negative balance or will otherwise risk Merchant's ability to meet Merchant's liabilities under this Terms and Conditions.

**3.12 Reserve Amount.** Merchant hereby authorizes Givex to instruct to establish and maintain (by itself or by financial institution partner(s)) a reserve amount as to be determined by Givex from time to time, to cover any amount that may become due from Merchant to Givex or Processor, including any expenses or losses, which may result from existing or expected Transaction Cancellations, Customer complaints, and Merchant's activity through the GivexPay Services and Processing Services ("Reserve"). The Reserve shall be funded by debiting the Merchant Payment Account or any bank account associated with the Merchant Payment Account. Givex may further require Merchant to deposit funds into the Merchant Payment Account in order to fund the Reserve.

**3.13 Collection of Debt; Set-Off.** Merchant agrees to pay all amounts due or owed to Givex, in relation to any of Merchant's accounts with Givex on demand. Merchant's failure to pay amounts owed to Givex under this Terms and Conditions, the Processor Terms, Payment Card Networks and/or any applicable law, is a breach, and Merchant will be liable for any costs Givex, Processor and/or the Payment Card Networks incur during collection in addition to the amount Merchant owes. Givex (by itself or by instructing Processor) may collect and/or set-off any amount due to Givex from Merchant, including any cost, expense or fee (including attorney and collection agency fees) associated with such collection, by: (a) instructing Processor to deduct such amounts from the Merchant Payment Account balance, from other Merchant Payment Accounts (if any) held under Merchant's name, or from the Reserve, and remit such deducted amounts to

Givex; (b) debiting the bank account, credit card or any other payment method held by Givex, whether provided for registering to GivexPay Services or otherwise (including any such payment methods associated with any other Givex account or GivexPay Services account held under Merchant's name); or (c) debiting any payment method connected to the website(s) associated with Merchant's GivexPay Services account or connected with Merchant's subscription to any other Givex services.

#### **4. GIVEX'S OBLIGATIONS**

**4.1 GivexPay Services.** Givex shall provide the GivexPay Services in the Acceptance Form and each accepted Order Form (if applicable) during the Term of this Terms and Conditions. Givex shall perform the GivexPay Services in a professional and workmanlike manner, consistent with generally accepted practices and procedures in the point-of-sale, gift and loyalty card industry. Givex agrees to provide Merchant with secure access to an online management and reporting website which Merchant may utilize to monitor the GivexPay Services (the "**Web Portal**"). Givex shall maintain accurate Customer information in its database at all times.

#### **4.2 Processing Services.**

**4.2.1** The Givex Platform enables Merchant to connect Merchant's website(s) and Merchant Payment Account to Payment Cards (online or in-person), and/or other payment processing methods provided by the Processor, enabling Merchant to receive and accept payments from Customers for Merchant's goods and services, in transactions carried out through and on Merchant's website(s), the Givex Platform, or otherwise (each, a "**Transaction**").

**4.2.2** Merchant hereby fully authorizes Givex to enable the Processing Services, submit Transactions, debit the Merchant Payment Account, make necessary decisions regarding the Processing Services.

**4.2.3** The Processing Services are provided by Processor, its Affiliates, and the acquiring bank. In order to use the GivexPay Services, Merchant, in addition to satisfying the other requirements detailed herein, hereby consents to and agrees to be bound by the *Processor Terms and Conditions* located at <https://www.adyen.com/legal/terms-and-conditions> (the "**Processor Terms**"), which are hereby incorporated by reference. For further details about the Processor and the acquiring bank, please review the Processor Terms. In providing the GivexPay Services and enabling Merchant's use of the Processing Services with Adyen N.V. as the Processor, Givex is acting as an agent of the acquiring bank. However, Givex is not a party to the Processor Terms and is not liable to Merchant with respect to any Processing Services, which are provided solely by the Processor.

#### **5. MERCHANT'S OBLIGATIONS**

**5.1** In addition to all other obligations under this Terms and Conditions and the Processor Terms, Merchant will at all times:

- (i) fully comply with all provisions and requirements of this Terms and Conditions and the Processor Terms;
- (ii) provide true, complete, accurate and valid information as requested by Givex and/or Processor in connection with the GivexPay Services and Processing Services, including Registration, and update Givex to ensure such information (including all Merchant Information) remains true, current, complete, accurate and valid;
- (iii) without derogating from Section 5.1(ii) above, promptly notify Givex writing no more than three (3) days after any of the following occur: (a) Merchant is the subject of any voluntary or involuntary bankruptcy or insolvency application, petition or proceeding, receivership, or similar action; (b) there is a materially adverse change in Merchant's financial condition; (c) there is a planned or anticipated liquidation or substantial change in the basic nature of Merchant's business; (d) Merchant transfers or sells 25% or more of Merchant's total assets, or there is any change in the control or ownership of Merchant's business or parent entity; (e) or Merchant receives a judgment, writ or warrant of attachment or execution, lien or levy against 25% or more of Merchant's total assets.
- (iv) comply with all applicable laws, regulations, rules and requirements, including but not limited to, those defined by Givex, Processor, Payment Card Networks, export regulations and sanction programs of any applicable authority;
- (v) not offer or sell any Merchant goods or services, or provide any information, content or material, including regarding Merchant's goods or services, which are prohibited by law or by Processor, included in the list of Prohibited and Restricted Goods and Services, and Prohibited and Restricted Transaction Types lists at <https://www.adyen.com/legal/list-restricted-prohibited> (Restricted and Prohibited Lists - Adyen), or seen as high risk by any of the Payment Card Networks, or is otherwise prohibited under this Terms and Conditions, Givex's policies and/or the Processor Terms; and
- (vi) promptly, and in any event within no later than seven (7) days, provide Givex with any information and documents that may be requested in relation to the full performance of the obligations under this Terms and Conditions and the Processor Terms, to enable the verification of Merchant's compliance.

**5.2 Contracting with Processor.** Merchant acknowledges and agrees that in order to comply with regulatory and Payment Card Network Rule requirements, Processor will need to have a direct contractual relationship with Merchant in order to be able to make the Processing Services available to Merchant and will need to perform *Know Your Customer (KYC)* and *Anti-Money Laundering and Anti-Terrorist Financing (AML)* verifications with respect to Merchant in accordance with applicable laws and Scheme Rules.

**5.2.1 Restricted and Prohibited Goods, Services, and Transaction Types.** Merchant acknowledges and agrees that in order to meet internal and external obligations, some industries may be prohibited or restricted from receiving services from Processor, which are based on a range of factors including but not limited to the following: (i) local, national and international laws; (ii) requirements of Processor's payment partners (e.g. card networks); (iii) level of assessed risk (e.g. chargebacks, fraud), or (iv) reputational impact to Process and cost aspects associated with this. Upon successful

Registration and during the Term of this Terms and Conditions (including any renewals) Merchant is strictly prohibited from offering or selling any Merchant goods or services, or providing any information, content or material, including regarding Merchant's goods or services, which are prohibited by law, or prohibited or restricted by Processor or included in the Prohibited and Restricted Goods and Services, and Prohibited and Restricted Transaction Types lists at <https://www.adyen.com/legal/list-restricted-prohibited> (Restricted and Prohibited Lists - Adyen), or seen as high risk by any of the Payment Card Networks, or is otherwise prohibited under this Terms and Conditions, Givex's policies and/or the Processor Terms. Any failure by Merchant to comply with this Section 5.2.1 shall be a material breach in which event Givex and Processor may immediately terminate this Terms and Conditions for cause.

**5.3 Registration.** In order to be able to use GivexPay Services, Merchant must register and provide certain information ("Registration"). The information required as part of the Registration may include Personal Information such as name, birthdate, identification number, physical address, phone number, tax identification details, email address, bank account details, other identification information about Merchant's business, its principals, beneficial owners, shareholders and Representative, trade names under which Merchant does business (DBA), a full description of the goods sold and/or services Merchant provides and other information as requested by Givex (collectively, "Merchant Information"). Givex may also require Merchant to provide documentation supporting the Merchant Information and/or documentation regarding Merchant's business activities and business risk, such as financial statements, invoices, licenses and/or government-issued identification documents. Givex may further require Merchant to provide additional information or documentation in order to ensure Merchant's compliance with this Terms and Conditions, the Processor Terms, Payment Card Network Rules, applicable laws and regulations, and any terms applicable to the Merchant Payment Account, in which case Merchant shall promptly provide such required information or documentation. By registering, Merchant hereby authorizes Givex to take any action together with Processor to enable Merchant to use the Processing Services, all in accordance with and subject to applicable laws, this Terms and Conditions, and the Processor Terms. All Merchant Information and documentation provided by Merchant in connection with the GivexPay Services and Processing Services as part of the Registration process or any subsequent inquiry or request, must be complete, up-to-date and accurate in all respects. Merchant is further responsible to update Givex to ensure that the Merchant Information and documentation and any other information from Merchant remains true, complete, accurate, and valid.

**5.3.1 Merchant Bank Account.** As part of the Registration process and in order to receive payouts, Merchant must provide details of a Merchant Bank Account. The Merchant Bank Account shall be subject to Processor's approval. Merchant is solely responsible for the accuracy of Merchant Bank Account details that Merchant provides to Givex and/or Processor. Merchant may request to change its Merchant Bank Account on file. Such change of the Merchant Bank Account shall be subject to Processor's approval, and may not be in effect in relation to Transactions conducted prior to the processing of such change. Merchant shall ensure that the Merchant Bank Account remains active, in good standing, and fully capable of being used in connection with the GivexPay Services and Processing Services, for as long as the Transactions conducted by Merchant are subject to cancellation or reversal (and as otherwise specified or required by the Payment Card Network(s) and/or Processor). Merchant may close the Merchant Bank Account only after satisfying Merchant's obligations under this Terms and Conditions, including those referenced in Section 3.13. Givex will notify Merchant as to when Merchant is able to close the Merchant Bank Account.

**5.3.2 Note:** If Merchant's Registration process is not completed within thirty (30) days, or if Merchant does not provide Givex with requested information or documentation, or if Givex or Processor is not able to verify the Merchant information or documentation within thirty (30) days, Givex or Processor may suspend and/or block Merchant's ability to accept payments from Customers, and further terminate this Terms and Conditions and/or return all Transaction amounts made prior to such time to the Customers. Givex may send Merchant a notice prior to such actions. However, whether notice is provided or not, this does not derogate in any way from Merchant's responsibility to ensure Merchant's compliance with these requirements.

**5.4 Verification & Underwriting.** After obtaining the required Merchant Information and documentation (if required), such Merchant Information and documentation, together with other information about Merchant and Merchant's website(s), will be used to verify and assess Merchant's eligibility to use the GivexPay Services and Processing Services. Givex will notify Merchant of Merchant's account status and will, on Merchant's behalf, instruct Processor to establish a Merchant Account. Notwithstanding the foregoing, Givex and/or Processor may, at any time and in its/their exclusive discretion, reject the attempted Registration of Merchant to use the GivexPay Services and Processing Services, or suspend or discontinue any Merchant's use of the GivexPay Services and Processing Services, at any time and for any reason, according to Givex's internal rules, risk considerations, any Givex Terms in addition to this Terms and Conditions, or any of the policies, procedures or instructions of Processor, acquiring bank, Payment Card Networks, and/or under the Processor Terms. Givex may further limit Merchant's use of the GivexPay Services and Processing Services (including based on the amounts Merchant processed) and the Merchant Account, and require further information and documentation in order to allow the use, or continued use, of the GivexPay Services and Processing Services or the payout of any Settlement Amounts, all in accordance with Givex's internal rules, its risk considerations, any of the policies, procedures or instructions of Processor, and/or under any Givex Terms and/or Processor Terms.

**5.5 Sharing Information with Third Parties** Givex and/or Processor may provide to each other, competent authorities, applicable acquiring and issuing banks, and Payment Card Networks, information related to Transactions conducted through the use of the GivexPay Services and Processing Services, information regarding the Merchant Account, the Merchant Information, or any other information and documentation Merchant provided during Registration or otherwise, and any other information held by Givex and/or Processor.

**5.5.1** Merchant hereby expressly acknowledges and agrees that Givex may share information provided by Merchant and provide instructions on Merchant's behalf as may be received from Merchant from time to time or as otherwise provided



herein, to third-parties (such as Processor and/or any affiliates, the acquiring bank, and the Payment Card Networks) in connection with the operation or management of GivexPay Services and Processing Services. Merchant hereby further authorizes Givex to review any information related to Merchant's Transactions made through the Givex Platform with any payment provider(s).

**5.6 Obligations to Payment Card Networks.** Merchant (i) shall act in accordance with the Payment Card Network Rules and Givex's instructions, with respect to use of the Payment Card Network trademarks on Merchant's website(s); (ii) acknowledges that each Payment Card Network is the sole and exclusive owner of its trademarks, and Merchant agrees not to contest the ownership of any Payment Card Network trademarks for any reason; and (iii) Merchant acknowledges that each Payment Card Network has the right to enforce any provision of its rules and to prohibit Merchant and/or Givex from engaging in any conduct such Payment Card Network deems could injure or create a risk of injury to it, including injury to its reputation, or that could adversely affect the integrity of the interchange system, or the Payment Card Network's Confidential Information. It is Merchant's responsibility to read and be aware of the Payment Card Network Rules.

**5.7 Responsibility for Customers & Transactions.** Unless otherwise agreed between Merchant and Givex in writing, Merchant agrees that it is the merchant of record and assumes all merchant responsibilities, including those under the Payment Card Network Rules with respect to each Transaction. Merchant shall be solely responsible and liable for any and all Transactions between it and its Customers, and for all liabilities arising from the offering of Merchants goods and services, and Transactions, including, but not limited to, all applicable legal and regulatory obligations. Merchant shall have sole, exclusive and full responsibility in regard to the relationship with its Customers. Merchant shall provide its Customers with proper ways to contact Merchant directly and has the sole responsibility for handling Customer complaints, resolving any Customer support issues with its Customers, and shall keep Givex fully exempted from any responsibilities with respect to the Customers and Merchant's goods and services. It is the Merchant's responsibility to ensure the correctness and legitimacy of Transactions, and to investigate and contact its Customers where it deems necessary prior to completing any suspicious Transactions.

**5.8 Responsibility for User Website & User Products.** Merchant is solely, exclusively, and fully responsible for (a) all Merchant goods and services; and (b) the content of Merchant's website(s), including the information, publicity, text and images presented on Merchant's website(s). Merchant agrees to ensure the compliance of its website(s), goods and services, with applicable laws and regulation and Payment Card Network Rules, including proper and accurate disclosure and description of Merchant's goods and services, Transactions, prices, amounts charged, and currencies. If Merchant engages in Transactions with Customers who are individuals, Merchant agrees to:

- (i) provide its Customers with disclosures as required by applicable laws and regulations,
- (ii) not to engage in unfair, deceptive or abusive acts or practices (UDAAP);
- (iii) comply with all applicable laws and regulations, and Payment Card Network Rules with respect to recurring transactions, including necessary disclosures and Customer consent prior to the recurring transaction, as well as the disclosure and method for canceling recurring transactions;
- (iv) the delivery and quality of all Merchant goods and/or services offered by Merchant to Customers, including any shipment arrangements, and Merchant's compliance with applicable export control laws;
- (v) the provision of a proper and accurate receipt describing the Transactions to the Customers;
- (vi) compliance with the Payment Card Industry Data Security Standard ("PCI DSS"), the Payment Application Data Security Standard ("PA DSS"), and any successor standards or requirements, as applicable; and
- (vii) compliance with applicable sanction programs, and any other applicable trade sanctioning regulations with respects to its Customers.

Givex hereby disclaims all responsibility and liability in connection with any of the foregoing, and may further be required to report to tax authorities certain reports regarding the Transactions.

**5.9 Responsibility for Charges, Fines & Losses.** As between Merchant and Givex, Merchant is responsible and liable for all charges, including fees, chargebacks, refunds, fines or penalties arising in connection with Merchant's use of the GivexPay Services and Processing Services, including any negative balance in the Merchant Payment Account. Givex may collect such funds by instructing Processor to deduct or set-off such funds from the Merchant Payment Account, in accordance with Section 3.13.

**5.9.1** Merchant further agrees that (a) Merchant is solely liable for any losses incurred by Givex or Processor as a result of any unauthorized, fraudulent, illegal, improper or erroneous use of GivexPay Services or Processor Services, including any use made in breach of this Terms and Conditions by any of Merchant's Customers, Merchant, or any of Merchant's employees, agents, representatives or contractors, and (b) Givex shall have no liability or obligation whatsoever in connection with any act or omission of Processor, the acquiring bank, and the Payment Card Networks. Without derogating from any other right, Givex may collect such losses described in Section 5.9.1(a), in accordance with Section 3.13.

**5.10 Enforcement.** Without limiting any other right Givex may have under this Terms and Conditions or under applicable laws or regulations, in the event of (a) suspected or actual fraud; (b) Merchant's breach or suspected breach of any of the terms or Merchant's representations, warranties, or obligations under this Terms and Conditions, any Givex Terms, the Processor Terms, Payment Card Network Rules, or applicable laws or regulations; and/or (c) due to Givex's risk considerations with respect to the Merchant Payment Account, Givex shall have the right, either directly or by providing instructions to Processor and with no liability to Merchant, to:

- (i) require Merchant to change, add or omit content from Merchant's website or take such actions itself, as it deems necessary or appropriate to ensure Merchant's compliance with the Payment Card Network Rules, the Processor Terms, this Terms and Conditions, and any Givex Terms;
- (ii) suspend or cancel any Transaction;

(iii) block or suspend Merchant's use of the GivexPay Services and Processing Services;  
(iv) instruct Processor to withhold any amounts that may be otherwise payable to Merchant;  
(v) instruct Processor to return any amount to Merchant's Customers; and  
(vi) share any information related to such activity with Processor, the financial institution, regulatory authority, or law enforcement agency, consistent with Givex's legal obligations. This information may include information about Merchant, the Merchant Payment Account, Merchant's Customers, and Transactions made through Merchant's use of the GivexPay Services and Processing Services.

**5.11 Account Transfer.** Unless otherwise confirmed to Merchant in writing, the Merchant Account is non-transferable, and any change of Merchant Information shall require prior approval by Processor in order to come into effect.

**5.12 Usage Restrictions.** Merchant will not, directly or indirectly: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the GivexPay Services; (b) modify, translate, or create derivative works based on the GivexPay Services; or copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the GivexPay Services; (c) use or access the GivexPay Services to build or support, and/or assist a third-party in building or supporting any products or services; (d) remove or obscure any proprietary notices or labels from the GivexPay Services; (e) use the GivexPay Services for any fraudulent undertaking or in any manner that could damage, disable, overburden, impair or otherwise interfere with Givex's provisioning of the GivexPay Services (including but not limited to the use of automated systems or software (e.g. screen scraping) to extract data from the Givex Platform or other aspects of the GivexPay Services); (f) violate or breach any operating procedures, requirements or guidelines regarding Merchant's use of the GivexPay Services that are posted on or through the Givex Platform or otherwise provided or made available to Merchant; (g) alter, distribute, license, resell, transfer, assign, rent, lease, timeshare or otherwise commercially exploit the GivexPay Services to any third-party or provide it as a service bureau; (h) conduct any penetration or vulnerability testing on the GivexPay Services, Givex Platform, or the Givex System; or (i) copy any features, functions, text or graphics of the GivexPay Services, including without limitation, the structure, sequence or organization of the Givex Platform.

**5.13** Merchant will use the GivexPay Services only for its own business, and not for any business, services or offerings of third-parties. Without limiting the generality of the foregoing, Merchant will not act as a payment intermediary or aggregator on behalf of any third-party. This means that Merchant may not use the GivexPay Services to handle, process or transmit funds for any third party. Merchant is also prohibited from using the GivexPay Services to process cash advances.

**5.14** Givex may perform maintenance on the GivexPay Services from time to time, which may result in service interruptions, delays, errors or bugs. Givex will not be liable for any such interruptions, delays, errors or bugs. Givex may contact Merchant in order to assist Givex with the GivexPay Services and obtain information needed to identify and fix any errors. The GivexPay Services do not function with every mobile device and may only be used on approved GivexPOS Equipment, or other approved point-of-sale hardware. Givex may alter which GivexPOS Equipment or other point-of-sale hardware is approved as compatible with the GivexPay Services in Givex's discretion from time to time, subject to reasonable notice.

**5.14.1 POS Products and Services.** Merchant may, at Givex's then prevailing pricing, purchase or rent GivexPOS Equipment and obtain GivexPOS Services from Givex and allow Merchant to accept card-present transactions. Merchant is under no obligation to purchase or rent point-of-sale equipment from Givex. The purchase, rental and use of the GivexPOS Solution will be subject to separate terms and conditions.

**5.15 Exclusivity.** During the Term of this Terms and Conditions, Merchant agrees to use Givex exclusively for marketplace services, including integrated payment services as detailed in this Terms and Conditions and Adyen N.V. as the Processor, at Merchant's participating locations and website(s).

**5.16** MERCHANT IS ADVISED NOT TO DELIVER GOODS OR PROVIDE SERVICES PRIOR TO THE VERIFICATION OF THE MERCHANT ACCOUNT. MERCHANT HEREBY ACKNOWLEDGES AND AGREES THAT IN THE EVENT THAT GIVEX OR PROCESSOR DECIDES TO REJECT MERCHANT'S REGISTRATION OR TERMINATES THE MERCHANT ACCOUNT AND DISCONTINUES THE USE OF GIVEXPAY SERVICES AND PROCESSING SERVICES, THE FUNDS ALREADY DEPOSITED TO THE MERCHANT ACCOUNT SHALL NOT BE PAID TO MERCHANT, AND SUCH FUNDS SHALL BE HELD BY PROCESSOR (AND TREATED ACCORDING TO ITS PROCEDURES) AND/OR REFUNDED TO THE RELEVANT CUSTOMERS. MERCHANT HEREBY ASSUMES ALL LIABILITY FOR ANY LOSS, COST OR DAMAGE MERCHANT MAY INCUR DUE TO THE REJECTION OF MERCHANT'S REGISTRATION, AND RELEASES GIVEX AND ANY THIRD PARTY FROM ANY SUCH LIABILITY.

**5.17** MERCHANT IS RESPONSIBLE AND LIABLE FOR ANY AND ALL LOSSES AND/OR DAMAGES DIRECTLY OR INDIRECTLY CAUSED BY PROVIDING INCORRECT, OUT-OF-DATE, INACCURATE, OR INCOMPLETE INFORMATION.

## **6. PRIVACY AND SECURITY**

**6.1 Limited Use of Personal Information.** Each Party agrees to comply with all applicable privacy laws and regulations relating to the protection, collection, use, and distribution of Personal Information. Merchant shall be solely responsible for ensuring that the proper legal notices are provided to its Customers at the time of the collection of any Personal Information by Merchant. Merchant agrees that Givex and Processor may use de-identified and/or aggregate transaction-related data for various purposes, including but not limited to, analyzing, tracking, and comparing transaction and other data to develop and provide insights for Givex's internal use, security reasons, velocity checks, heuristics, and/or marketing of products or services, Processor's internal use, and for merchants and/or others as well as for developing, marketing,

maintaining and/or improving such products and services. Givex will not disclose any Personal Information obtained, collected or stored in connection with the GivexPay Services without the prior written consent of Merchant.

**6.2 Personal Information.** Solely for the purpose of privacy and security with respect to Personal Information, the term “**process**” (and derivatives thereof such as ‘processed’, and ‘processing’) means, any operation or set of operations which is performed on Personal Information or on sets of Personal Information, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of such information. The Parties acknowledge and agree that (a) any Personal Information processed in connection with the GivexPay Services shall be the sole and exclusive property of Merchant; (b) Givex shall make any such Personal Information available to Merchant upon request, provided the requested information is still in Givex’s possession at the time of the request; (c) Givex shall treat such Personal Information as Confidential Information of Merchant and shall at no time disclose any such Personal Information to any person other than Merchant, without the prior written consent of Merchant, or unless Merchant has otherwise expressly approved such disclosure in the Agreement; (d) each Party shall promptly notify the other Party of any Personal Information Breach involving Personal Information in the care, custody, or control of it or its Affiliates, subcontractors, personnel, or agents; and (f) each Party shall be solely responsible and liable for any fees, penalties, or other liabilities that arise from a Personal Information Breach involving Personal Information that in the care, custody, or control of it or its Affiliates, subcontractors, personnel, or agents. In addition, unless otherwise directed by Merchant in compliance with applicable laws, Givex shall retain Personal Information only for so long as is necessary to fulfill its obligations under the Agreement and thereafter Givex shall delete such information to protect the privacy of Merchant’s Customer. Givex agrees to: (i) comply with **Data Privacy and Security Laws** applicable to Givex regarding Personal Information; (ii) implement and maintain reasonable security procedures and practices appropriate to the nature of the Personal Information to protect it from unauthorized access, use, or disclosure, and comply with the Data Security Exhibit attached hereto as Schedule B (Data Security Exhibit); and (iii) dispose of any Personal Information in a manner reasonably designed to ensure that the Personal Information cannot be accessed or obtained by any third-parties. All privacy obligations under this Section with respect to Personal Information shall survive termination of the Agreement (including this Terms and Conditions) for as long as any Personal Information remains in the care, custody, or control of Givex or Givex Affiliates, subcontractors, personnel, or agents.

**6.3 Security.** Givex agrees to comply with the provisions of the Data Security Exhibit attached to this Terms and Conditions as Schedule B (Data Security Exhibit), which forms a part of this Terms and Conditions.

#### **6.4. Personal Information (PI) Breach Indemnity.**

**6.4.1 Givex PI Breach Indemnity.** Givex agrees to defend, hold harmless, and indemnify Merchant, its Affiliates and their respective directors, officers, employees, agents, representatives and assigns (the “**Merchant Indemnified Party**”), from any and all losses, claims, demands, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of their legal counsel that may be incurred in advising with respect to and/or defending any action, suit, proceedings, investigation or claim that may be made or threatened against Merchant Indemnified Party by any third-party, including a supervisory authority or other government regulator, in enforcing this indemnity (collectively, the “**Claims**”), to which the Merchant Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, arise out of or are based upon any Personal Information Breach involving Personal Information in the care, custody, or control of Givex or Givex Affiliates, subcontractors, employees, agents, or representatives.

Givex’s total aggregate liability arising from this Section 6.4.1, the Agreement (including this Terms and Conditions and Schedule B (Data Security Exhibit)), and otherwise in connection with any related indemnities regarding Personal Information Breaches, including any costs and expenses arising from or related to Personal Information Breaches, including any and all PI Breach Costs, whether in contract or tort, shall not exceed the total fees paid by Merchant to Givex during the twelve (12) month period immediately preceding the event giving rise to the Claim. For clarity, the Personal Information Breach costs and expenses pursuant to this Section 6.4.1, the Agreement (including this Terms and Conditions and Schedule B (Data Security Exhibit)), and otherwise in connection with any related indemnities regarding Personal Information Breaches will include the following “**PI Breach Costs**”: (a) costs, expenses (including reasonable attorney and expert witness fees), damage awards, fines and penalties resulting from Claims, investigations, litigation, arbitration and mediation; (b) costs and expenses of responding concerning a breach (for example, the cost of notifying Merchant’s customers, regulatory authorities and others affected directly by the breach); and (c) costs and expenses of mitigation and remediation of the breach, including any provision of monitoring service, credit protection service, credit fraud alert and/or similar services that Merchant deems reasonably necessary to protect its customers due to the risks posed by the breach.

**6.4.2 Merchant PI Breach Indemnity.** Merchant agrees to defend, hold harmless, and indemnify Givex, its parent, and Givex Affiliates and their respective directors, officers, employees, agents, representatives and assigns (the “**Givex Indemnified Party**”), from any and all Claims, to which the Givex Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, arise out of or are based upon any Personal Information Breach involving Personal Information in the care, custody, or control of Merchant or its Affiliates, subcontractors, employees, agents, or representatives.

## **7. CONFIDENTIALITY**

**7.1 General.** The Parties agree to hold in the strictest confidence all Confidential Information of the other Party and shall not disclose, publish, divulge or make same available to any third party whatsoever, whether directly or indirectly, nor shall it use or exploit same for the purposes of unfair competition or to further any third-party relationship, whether tangible or implied. Confidential Information furnished by either Party in connection with this Terms and Conditions and all reproductions and copies of such Confidential Information shall remain the property of the Disclosing Party. Both Parties agree to take reasonable and prudent actions to protect the confidentiality of the Confidential Information of the other Party, including, but not limited to, implementing and operating procedures to minimize the possibility of unauthorized use or copying of the Confidential Information and limiting the disclosure of Confidential Information to those employees who have a legitimate need to know such Confidential Information in order to fulfill their obligations under this Terms and Conditions. No right or license, whether express or implied, is granted hereunder with respect to Confidential Information. Each Party acknowledges that any disclosure of the Confidential Information will cause the other Party significant economic harm for which monetary damages may be inadequate. In the event of any breach of Section 7, the breaching Party agrees that the non-breaching Party shall be entitled to seek an injunction restraining it, its Affiliates and subsidiaries, employees and agents and others from disclosing or misusing the Confidential Information. Nothing in this Section shall be construed as prohibiting the non-breaching Party from pursuing any other available remedies, in law or equity, in respect to such breach or threatened breach, including the recovery of damages. It is understood and agreed that the obligations of this Section shall survive the expiration or termination of this Terms and Conditions or any section thereof.

**7.2 Court Orders.** If Receiving Party is required by a court order, interrogatory, subpoena, civil investigative demand or similar process or law to disclose any Confidential Information, Receiving Party will promptly notify Disclosing Party hereunder of such request or requirement so that Disclosing Party may seek to avoid or minimize the required disclosure and/or to obtain an appropriate protective order or other appropriate relief to ensure that any information so disclosed is maintained in confidence to the maximum extent possible by the court, agency or other person receiving the disclosure or, in the discretion of Disclosing Party, to waive compliance with the provisions of Section 7. Receiving Party will use its reasonable efforts, in cooperation with Disclosing Party or otherwise, to avoid or minimize the required disclosure and/or to obtain such protective order or other relief. If, in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party is compelled to disclose the Confidential Information or else stand liable for contempt or such other similar sanctions, censure or penalty, Receiving Party will disclose only so much of the Confidential Information to the Party compelling disclosure as it believes in good faith on the basis of advice of legal counsel is required by law. Receiving Party shall give Disclosing Party prior notice of the Confidential Information it believes it is required to disclose.

**7.3 Return or Destruction of Confidential Information.** Upon the written request of Disclosing Party, Receiving Party will promptly deliver to Disclosing Party all documents and other materials furnished by Disclosing Party to Receiving Party constituting Confidential Information. Receiving Party may, upon written approval of Disclosing Party, destroy certain documents and materials constituting Confidential Information in lieu of its delivery to Disclosing Party, with such destruction certified by Receiving Party in writing to the Disclosing Party. Notwithstanding the delivery or destruction of Confidential Information, Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder. Receiving Party is not required to destroy any computer records or files containing Confidential Information which have been created pursuant to automatic archiving and back-up procedures which cannot be reasonably accessed or deleted.

## **8. OWNERSHIP: INTELLECTUAL PROPERTY, MERCHANT DATA, CUSTOMER DATA**

**8.1 Intellectual Property of Givex.** Nothing in this Terms and Conditions or otherwise shall give Merchant any right, title to, or interest in the Intellectual Property of Givex. Givex owns all rights, title, interest, copyright and other worldwide Intellectual Property rights in and to the GivexPay Services, Givex Platform, Givex App (if any), Givex System, and Givex Documentation (including all derivatives, updates, modifications, upgrades, enhancements, extensions, or improvements thereof, as well as any new features, functionality, applications, or services, whether developed by or on behalf of Givex), all of which shall and are expressly intended to remain vested in Givex.

**8.1.1 Feedback.** Merchant may voluntarily submit Feedback to Givex at any time. Merchant hereby irrevocably assigns all right, title, interest and other worldwide Intellectual Property rights in and to the Feedback to Givex, and acknowledges that Givex is free to use, disclose, reproduce and otherwise exploit any and all Feedback provided by Merchant or any Merchant employee relating to the GivexPay Services, Givex Platform, Givex App (if any) in Givex's sole discretion, entirely without obligation or restriction of any kind.

**8.2 Intellectual Property of Merchant.** Except for the limited license granted to Givex in Section 8.3 of this Terms and Conditions, nothing in this Terms and Conditions or otherwise shall give Givex any right, title, or interest in the Intellectual Property of Merchant.

**8.3 Use of Merchant's Name and Trademarks.** Merchant hereby grants to Givex a limited, non-exclusive, non-transferable, worldwide, royalty-free license to use Merchant's trade name, logos and trademarks in Givex's advertising, marketing and promotional materials and activities including on Givex's websites and social media sites, and in presentations, case studies, trade show materials, and other advertising, marketing and promotional media and collateral, during the Term of the Agreement (including any extensions and renewals hereof), provided that such use does not adversely affect the reputation of Merchant.

**8.4 Merchant Data.** Merchant owns all Merchant Data. Merchant hereby grants to Givex a non-exclusive, royalty-free, fully paid-up, and worldwide license to use, copy, modify (including the right to create derivative works of), display and transmit Merchant Data in connection with the GivexPay Services and the Agreement. Merchant is solely responsible for the accuracy, quality, content and legality (including compliance with applicable laws and regulations) of the Merchant Data, the means by which the Merchant Data is acquired, and any transfer and use of the Merchant Data outside of the GivexPay

Services by Merchant or any third-party authorized by Merchant. Merchant will not upload or store any data or materials containing any such information in violation of this Section.

**8.5 Customer Data.** Merchant acknowledges and agrees that, in the course of providing the GivexPay Services to Merchant, both Givex and Merchant may collect, store and use Customer Data. To the extent that Givex collects any Personal Information from Merchant's Customers Givex shall comply with all applicable laws, regulations and rules, including Data Privacy and Security Laws and shall be solely responsible for putting in place any additional controls (e.g. notice, consent) and governance in relation to Givex's use of the Personal Information. To the extent that Merchant collects any Personal Information from Customers Merchant shall comply with all applicable laws, regulations and rules, including Data Privacy and Security Laws and shall be solely responsible for putting in place any additional controls (e.g. notice, consent) and governance in relation to Merchant's use of the Personal Information. Each Party's use of Customer Data shall be in compliance with the applicable laws, regulations and rules.

## **9. REPRESENTATIONS AND WARRANTIES**

**9.1 By Givex.** Givex hereby represents and warrants to Merchant that: (a) it has all requisite corporate power to enter into this Terms and Conditions and to carry out the terms of this Terms and Conditions; (b) all corporate action on the part of Givex, Givex Affiliates and subsidiaries, officers, directors and stockholders necessary for the performance of its obligations under this Terms and Conditions has been taken; (c) this Terms and Conditions constitutes its valid and legally binding obligation, enforceable against it in accordance with the terms hereof; and (d) it is a corporation in good standing in its jurisdiction of incorporation. Givex hereby further covenants that it will provide the GivexPay Services and will obtain, use and disclose Personal Information (if any) in compliance with all applicable laws, rules and regulations, including without limitation, Data Privacy and Security Laws, and anti-spam laws, rules and regulations.

**9.2 By Merchant.** Merchant hereby represents and warrants to Givex that: (a) it has all requisite corporate power to enter into this Terms and Conditions and to carry out the terms of this Terms and Conditions; (b) all corporate action on the part of Merchant, its Affiliates and subsidiaries, officers, directors and stockholders necessary for the performance of its obligations under this Terms and Conditions has been taken; (c) this Terms and Conditions constitutes a valid and legally binding obligation, enforceable against it in accordance with the terms hereof; (d) it is a business in good standing in its jurisdiction of registration or incorporation; (e) it has not received or is not subject to any bankruptcy notice or proceeding; (f) Merchant will use the GivexPay Services and Processing Services only for Merchant's business and not for the benefit of any third-party; (g) all of the Merchant Information provided is complete and accurate; (h) Merchant will not use GivexPay Services or Processing Services for any fraudulent or illegal purposes or in breach of this Terms and Conditions; (i) the Merchant Bank Account is registered under Merchant's legal name; (j) in the event that Merchant's accounts with GivexPay Services and Processing Services were terminated by Givex or Processor in the past, Merchant will not register with GivexPay Services without Givex's prior written approval; and (k) and covenants that it has all rights necessary to upload the Merchant Data to the GivexPay Services and Givex Platform and to otherwise have such Merchant Data used or shared or otherwise processed, as applicable, by Givex in relation to the GivexPay Services and this Terms and Conditions. Merchant hereby further covenants that it will use the GivexPay Services, Givex Platform, and Processing Services and will obtain, use and disclose Personal Information in compliance with all applicable laws, rules and regulations, including without limitation, Data Privacy and Security Laws, and anti-spam laws, rules and regulations.

**9.3 No Additional Representations or Warranties.** EXCEPT FOR ANY EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS TERMS AND CONDITIONS, THE PRODUCTS AND SERVICES, INCLUDING THE GIVEXPAY SERVICES AND GIVEX PLATFORM, ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. GIVEX MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS, SERVICES, GIVEXPAY SERVICES, OR GIVEX PLATFORM TO BE PROVIDED HEREUNDER OR THEIR CONDITION, MERCHANTABILITY, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE OR USE BY MERCHANT OR ANY THIRD-PARTY. GIVEX AND ITS THIRD-PARTY PROVIDERS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE RELIABILITY, AVAILABILITY, TIMELINESS, SUITABILITY, ACCURACY OR COMPLETENESS OF THE SERVICES, GIVEXPAY SERVICES, GIVEX PLATFORM, PROCESSING SERVICES OR THE RESULTS MERCHANT MAY OBTAIN BY USING ANY OF THESE SERVICES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, GIVEX AND ITS THIRD-PARTY PROVIDERS DO NOT REPRESENT OR WARRANT THAT (A) THE OPERATION OR USE OF THE SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR-FREE; OR (B) THE QUALITY OF THE SERVICES WILL MEET MERCHANT'S REQUIREMENTS. MERCHANT ACKNOWLEDGES THAT NEITHER GIVEX NOR ITS THIRD-PARTY PROVIDERS CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. GIVEX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS. WITHOUT LIMITING THE FOREGOING, GIVEX DOES NOT WARRANT OR GUARANTEE THAT ALL SECURITY ATTACKS WILL BE DISCOVERED, REPORTED OR REMEDIED, OR THAT THERE WILL NOT BE ANY SECURITY BREACHES BY THIRD-PARTIES. NEITHER GIVEX NOR PROCESSOR (NOR ANY OTHER PARTY PROVIDING ANY PORTION OF GIVEXPAY SERVICES OR PROCESSING SERVICES) SHALL BE RESPONSIBLE FOR ANY FAULTS, DELAYS OR INTERRUPTIONS IN THE GIVEXPAY SERVICES OR PROCESSING SERVICES THAT ARE A RESULT OF RESTRICTIONS IMPOSED BY ANY GOVERNMENT OR TELECOMMUNICATIONS SERVICE OPERATORS, OR AS RESULT OF ANY MISUSE OF THESE SERVICES BY MERCHANT OR ITS AFFILIATES, EMPLOYEES, REPRESENTATIVES, AGENTS OR CONTRACTORS.

## **10. INDEMNITY; LIMITATION OF LIABILITY**

**10.1 Indemnification.** Each Party (the "Indemnifying Party") will defend, indemnify, save and hold harmless the other Party, each of its Affiliates and subsidiaries and their respective directors, offices, employees, agents and representatives (collectively, the "Indemnified Party"), from any and all losses, claims, demands, actions, damages and liabilities, joint or several, including the aggregate amount paid in reasonable settlement of any actions, suits, proceedings, investigations or claims and the reasonable fees and expenses of their legal counsel that may be incurred in advising with respect to and/or

defending any action, suit, proceedings, investigation or claim that may be made or threatened against any Indemnified Party in enforcing this indemnity (collectively, the “Claims”), to which the Indemnified Party may become subject or otherwise involved in any capacity insofar as the Claims relate to, are caused by, arise out of or are based upon, directly or indirectly, (a) a breach of any material obligation, representation or warranty in this Terms and Conditions by the Indemnifying Party, or (b) any acts or omissions which involve negligence, recklessness or intentional misconduct of the Indemnifying Party, or (c) breach of any applicable privacy, data security or anti-spam law, rule or regulation, or (d) with respect to Merchant as Indemnifying Party, Givex’s processing activities on behalf of Merchant, (e) with respect to Merchant as Indemnifying Party, the business of Merchant, or (f) with respect to Merchant as Indemnifying Party, any Tax assessment, or (g) with respect to Merchant as Indemnifying Party, any actions taken by Givex or its service providers in accordance with or in good faith reliance upon information or instructions provided by the Merchant or any of its agents or representatives, or (h) with respect to Merchant as Indemnifying Party, any Claim by a Customer, or any obligation owed to any Customer or other third-party by Merchant, or any Claim by any third-party retained by Merchant; or (i) with respect to Merchant as Indemnifying Party, Merchant’s use of any third party telecommunication services provided to Merchant in connection with the Agreement.

**10.2 Notice of Claims.** The Indemnified Party shall give written notice to the Indemnifying Party of any Claims for which indemnification is sought. The Indemnified Party shall cooperate fully with the Indemnifying Party in defending and/or settling the Claims. The obligations of the Indemnifying Party in Section 10.1 shall not apply to the extent that the Claims arise as a result of any breach of a material obligation in this Terms and Conditions by the Indemnified Party or a breach of any representation or warranty by the Indemnified Party. The Indemnifying Party reserves the right, at its absolute discretion, to assume the exclusive control of the defense of any Claims for which indemnification is sought by the Indemnified Party hereunder; provided that the Indemnifying Party shall not settle any Claims or consent to any judgment, order or decree that may materially and adversely affect the Indemnified Party, without the Indemnified Party’s prior written consent.

**10.3 Limitation of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS OF EACH PARTY SET FORTH IN THIS TERMS AND CONDITIONS, IN NO EVENT AND UNDER NO CIRCUMSTANCE SHALL EITHER PARTY HEREIN BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, CONSEQUENTIAL, SPECIAL, INCIDENTAL OR INDIRECT DAMAGES OR LOSS OF INCOME, PROFIT, OR SAVINGS OF ANY PARTY OR PARTIES, INCLUDING THIRD PARTIES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE, CONTRACT, EQUITY, INTENDED CONDUCT, TORT, OR OTHERWISE), ARISING OUT OF OR RELATED TO THIS TERMS AND CONDITIONS, WHETHER OR NOT SUCH PARTY OR PARTIES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **11. GENERAL**

**11.1 Notice.** Any notices or other communications under the Agreement may be delivered by Givex to Merchant by any one or more of the following methods: (i) by registered mail at the address that Givex has on record for Merchant; (ii) by fax at the fax number that Givex has on record for Merchant; or (iii) by posting them on Givex’s website.

Any notice or other communication under the Agreement shall be delivered by Merchant to Givex by registered mail or fax, to Givex Canada Corp., 134 Peter Street, Suite 1400, Toronto, Ontario, Canada M5V 2H2, Attention: President. Fax (416) 350-9661.

**11.2 Assignment.** The Agreement (including this Terms and Conditions) may not be assigned by either Party without the prior written consent of the other Party, such consent not to be unreasonably withheld, conditioned, or delayed. The Agreement (including this Terms and Conditions) shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the Parties hereto.

**11.3 Amending The Agreement.** GIVEX CAN AMEND, RESTATE, SUPPLEMENT OR OTHERWISE MODIFY THE AGREEMENT (INCLUDING THIS TERMS AND CONDITIONS AND ANY OF THE SCHEDULES) AT ANY TIME BY GIVING MERCHANT NOTICE PURSUANT TO SECTION 11.1 (INCLUDING BY POSTING THE AMENDED AGREEMENT ON GIVEX’S WEBSITE) EFFECTIVE ON THE DATE STATED IN THE NOTICE. MERCHANT’S CONTINUED USE OF GIVEX’S SERVICES AFTER THE EFFECTIVE DATE OF ANY AMENDMENT, RESTATEMENT, SUPPLEMENTATION OR ANY OTHER MODIFICATION TO THE AGREEMENT CONSTITUTES ACCEPTANCE OF ANY SUCH AMENDMENT, RESTATEMENT, SUPPLEMENTATION OR OTHER MODIFICATION.

**11.4 Waivers.** The waiver by any Party hereto of any provision, default or breach of the Agreement (including this Terms and Conditions) shall not operate or be construed as a modification of the Agreement or waiver of any other default or breach. No waiver of any provision, default or breach of the Agreement shall be effective unless documented in writing and duly signed by the Party waiving any such provision, default or breach.

### **11.5 Dispute Resolution.**

**11.5.1 Duty to Notify.** In the event of any dispute or controversy arising out of or relating to the Agreement (this Terms and Conditions), the Party raising such dispute will notify the other promptly but no later than fifteen (15) days from the date of its discovery of the dispute, or subject to any earlier dispute notification period set out in this Terms and Conditions.

**11.5.2 Cooperation to Resolve disputes.** The Parties will cooperate and attempt in good faith to resolve any dispute promptly by negotiating between representatives with authority to settle the dispute and who are at a higher level of management than the persons with direct responsibility for administration and performance of the provisions or obligations of this Terms and Conditions that are the subject of the dispute. In the event that the Parties are unable to resolve any dispute between them in accordance with this Section notwithstanding their good faith efforts to do so, the Parties may

resort to their remedies available at law or in equity. Nothing in this Section 11.5 shall prevent a Party from immediately seeking any legal or equitable relief from a court of competent jurisdiction in connection with the Agreement.

**11.6 Severability.** If any provision contained in the Agreement shall be declared invalid, illegal or unenforceable by a court of competent jurisdiction, such invalid, illegal, or unenforceable provision shall be severed from the Agreement and will be ineffective only to the extent of such illegality, invalidity or unenforceability and shall not affect or impair the remaining provisions hereof.

**11.7 No Partnership or Joint Venture.** The Parties to the Agreement (including this Terms and Conditions) are and shall remain independent contractors. The Parties confirm that they are not carrying on business in partnership or as a joint venture and that no aspect of the Agreement should be construed so as to constitute a partnership or joint venture.

**11.8 Force Majeure.**

**11.8.1** Neither Party shall be deemed in default hereunder, nor shall it hold the other Party responsible for, any cessation, interruption or delay (collectively, “**Interruption**”) in the performance of its obligations caused by acts of God, epidemic, pandemic, fire, flood, war, civil unrest, or strike or other causes which are beyond such Party’s reasonable control (each a “**Force Majeure**”), and which such Party is unable to overcome by the exercise of reasonable diligence.

**11.8.2** The Party experiencing a Force Majeure shall as soon as is reasonably possible after the commencement of the Force Majeure: (i) notify the other Party in writing of the circumstances creating the Interruption; (ii) explain in writing the effects of the Force Majeure on its ability to perform its obligations under this Terms and Conditions; and (iii) use commercially reasonable efforts to resume performance whenever and to whatever extent possible without delay.

**11.8.3** If an Interruption caused by a Force Majeure exceeds thirty (30) consecutive days, the other Party may, at its option, immediately terminate this Terms and Conditions by notice in writing to the Party experiencing the Force Majeure.

**11.8.4** Merchant acknowledges and agrees that if there is any Interruption in its payment obligations under this Terms and Conditions due to a Force Majeure Givex may, in Givex’s sole discretion, suspend providing Givex Services hereunder until such time as Merchant resumes payment.

**11.9 Residents of Quebec.** It is agreed that it is the express wish of the Parties that the Agreement and any related documents be drawn up and executed in English. Il est la volonté expresse des Parties que Moneris Merchant Agreement - Terms and Conditions Page 16 of 16 December 2016 cette convention et tous les documents s’y rattachant soient rédigés en anglais.

**11.10 Survival.** The obligations, representations, warranties, indemnities and limitations in the Agreement (including herein) shall survive the expiration and termination of the Agreement.

**11.11 Governing Law.** The Agreement (including this Terms and Conditions) shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws applicable therein. Any and all disputes or controversies relating to or arising out of the Agreement shall be settled by the courts in Toronto, Ontario, with the exclusion of any other, even if more privileged.

## **SCHEDULE A – GIVEXPAY SERVICES**

### **I. SERVICES**

**GivexPay Services.** Subject to the terms and conditions of the Acceptance Form and each accepted Order Form (if applicable), the GivexPay Services, the Givex GivexPay Services will enable Merchant to process payments through credit and debit cards via a terminal provided to the merchant by Givex and connected with the GivexPOS system. Payment transactions processed through the payment terminal and GivexPOS will be processed in real time. Each transaction will result in an approval or decline. After the processing of each transaction whether authorized or declined a record will be recorded for reporting through the Givex system. In the event that the system is offline due to internet outages, while the GivexPOS will be prepared to process a transaction in offline mode, the merchant will need to accept payment through an alternative means. The Givex system will provide reporting on transactions through the Givex portal, and fund settlement will be conducted to the merchant's preferred bank account on a periodic basis.

### **II. SUPPORT SERVICES**

Givex agrees to maintain a help desk during the Term of the Agreement using which Merchant may obtain assistance with the operation of the GivexPay Services at its participating locations (the "Support Services"). The Support Services shall include diagnosing and resolving problems identified by Merchant with the initiation of gift and/or loyalty card transactions at its participating locations. The Support Services will be made available to Merchant on a 24/7 basis via telephone and electronic mail. Merchant shall be solely responsible for providing support services to its customers in connection with the Merchant's program.

### **III. MONITORING AND REPORTING**

Givex agrees to provide the Merchant with secure access to the Web Portal for the purpose of enabling the Merchant to monitor and generate reports in connection with the GivexPay Services. Merchant shall receive one or more personal identification numbers and passwords for accessing the Web Portal. Merchant agrees to maintain the personal identification numbers and passwords confidential at all times and to allow no unauthorized persons to access Merchant's account on the Web Portal. Merchant acknowledges and agrees that Givex may access Merchant's account for the purpose of performing routine maintenance and responding to support inquiries from Merchant. Merchant may utilize the Web Portal to generate transaction reports showing the details of gift and/or loyalty cards that have been activated, sold, redeemed and/or cancelled at the Merchant's participating locations. Merchant may also generate customized reports showing the outstanding balances, expiration dates and transaction histories of activated gift and/or loyalty cards on a location-by-location basis. All reports generated through the Web Portal may be scheduled for delivery on a daily, weekly, quarterly or monthly basis in html, xml, pdf, text file (data) or comma separate value (csv) format. Givex reserves the right to change the scheduling of any ordered reports, from time to time. All changes to the scheduling of ordered reports will be made by Givex, in good faith, with the aim of enhancing the performance of the Web Portal and the Services, as a whole.



## SCHEDULE B - DATA SECURITY EXHIBIT

### 1. SCOPE; DEFINITIONS

- 1.1 Security Policy. Givex will comply with the information security requirements set forth in this Exhibit E (the "**Security Policy**"). The Security Policy applies to Givex's performance under the GivexPay Merchant Agreement (the "**Agreement**") and all access, collection, use, storage, transmission, disclosure, destruction or deletion of, and security incidents regarding, Merchant Information. This Security Policy does not limit other obligations of Givex, including under the Agreement or laws that apply to Givex, Givex's performance under the Agreement, the Merchant Information or the Permitted Purpose. To the extent this Security Policy directly conflicts with the Agreement, Givex will promptly notify Merchant of the conflict and will comply with the requirement that is more restrictive and more protective of Merchant Information.
- 1.2 Definitions.
- 1.2.1 "**Aggregate**" means to combine or store Merchant Information with any data or information of Givex or any third-party.
- 1.2.2 "**Anonymize**" means to use, collect, store, transmit or transform any data or information (including Merchant Information) in a manner or form that does not identify, permit identification of, and is not otherwise attributable to any user, device identifier, source, product, service, context, brand, or Merchant or its affiliates.
- 1.2.3 "**Merchant Information**" means, individually and collectively: (a) all Merchant Confidential Information (as defined in the Agreement or in the non-disclosure agreement between the parties); (b) all other data, records, files, content or information, in any form or format, acquired, accessed, collected, received, stored or maintained by Givex or its affiliates from or on behalf of Merchant or its affiliates, or otherwise in connection with the Agreement, the services, or the parties' performance of or exercise of rights under or in connection with the Agreement; and (c) derived from (a) or (b), even if Anonymized.
- 1.2.4 "**Givex**" means **Givex Canada Corp.**
- 1.3 Permitted Purpose. Except as expressly authorized under the Agreement, Givex may access, collect, use, store, and transmit only the Merchant Information expressly authorized under the Agreement and solely for the purpose of providing the services under the Agreement (the "**Permitted Purpose**"). Except as expressly authorized under the Agreement, Givex will not access, collect, use, store or transmit any Merchant Information and will not Aggregate Merchant Information, even if Anonymized. Except as expressly authorized under the Agreement or otherwise with Merchant's prior express written consent, Givex will not (1) transfer, rent, barter, trade, sell, rent, loan, lease or otherwise distribute or make available to any third-party any Merchant Information or (2) Aggregate Merchant Information with any other information or data, even if Anonymized.

### 2 Merchant Security Policy.

- 2.1 Basic Security Requirements. Givex will, consistent with current industry standards and such other requirements specified by Merchant based on the classification and sensitivity of Merchant Information, maintain physical, administrative and technical safeguards and other security measures (i) to maintain the security and confidentiality of Merchant Information accessed, collected, used, stored or transmitted by Givex, and (ii) to protect that information from known or reasonably anticipated threats or hazards to its security and integrity, accidental loss, alteration, disclosure and all other unlawful forms of processing. Without limitation, Givex will comply with the following requirements:
- 2.1.1 Firewall. Givex will install and maintain a working network firewall to protect Merchant Information accessible via the Internet and will keep all Merchant Information protected by the firewall at all times.
- 2.1.2 Encryption. Givex will encrypt Merchant Information at rest and when sent across open networks in accordance with industry best practices.
- 2.1.3 Access Controls. Givex will secure Merchant Information, including by complying with the following requirements:
- i. Givex will assign a unique ID to each person with computer access to Merchant Information.
  - ii. Givex will by default deny access to Merchant Information and will provision access to Merchant Information to only those people with a "need-to-know" for a Permitted Purpose.
  - iii. Givex will regularly review the list of people and services with access to Merchant Information and remove accounts that no longer require access. This review must be performed as soon as reasonably practical, and at minimum, at least once every ninety (90) days.
  - iv. Givex will implement and use additional access scope controls as requested in writing by Merchant to restrict access to specific white-listed systems managed by Givex, whitelisted hosts, and/or whitelisted networks.
  - v. Except where expressly authorized by Merchant in writing, Givex will technically, or at a minimum, logically, isolate Merchant Information at all times (including in storage, processing or transmission), from Givex's and any third-party's information.
  - vi. Givex will secure physical access to its facilities via electronic access controls to buildings and track anyone entering a facility where Merchant Information can be accessed. Hosts and infrastructure storing and processing Merchant Information must be housed inside a locked data facility, controlled by Givex or its contracted service provider, with strong authentication and camera monitoring, or equivalent.
  - vii. Givex will implement and use additional physical access control measures as requested in writing by Merchant.
  - viii. Givex will regularly review access logs for signs of malicious behavior or unauthorized access.
  - ix. Givex will retain access logs for twelve (12) months unless subject to longer regulatory or legal requirements.
- 2.1.4 Givex Policy. Givex will maintain and enforce a written information security policy and a network security policy for employees, subcontractors, agents, and suppliers that meets the standards set out in this policy. Upon request by Merchant, Givex will provide Merchant with information on violations of Givex's information security policy and network security policy, even if it does not constitute a Security Incident.
- 2.1.5 Subcontract. Givex will not subcontract or delegate any of its obligations under this Security Policy to any subcontractors, affiliates, or delegates ("**Subcontractors**") without Merchant's prior written consent, such consent not to be unreasonably withheld. Givex will enter into a written contract with any Subcontractor requiring the Subcontractor to abide by terms regarding the security of Merchant Information that are equivalent to those set forth in the Agreement (including this Exhibit). Notwithstanding the existence or terms of any subcontract or delegation, Givex will remain responsible for the full performance of its obligations under this Security Policy. The terms and conditions of this Security Policy will be binding upon Givex's Subcontractors and personnel. Givex (a) will ensure that its Subcontractors and personnel comply with this

Security Policy, and (b) will be responsible for all acts, omissions, negligence and misconduct of its Subcontractors and personnel.

2.1.6 Remote Access. Givex will ensure that any access from outside protected corporate or production environments to systems holding Merchant Information or Givex's corporate or development workstation networks requires multi-factor authentication (e.g., requires at least two separate factors for identifying users).

2.1.7 "In Bulk" Access. Except where expressly authorized by in writing, Givex will not access, and will not permit access to, Merchant Information "in bulk" whether the Merchant Information is in an Merchant- or Givex-controlled database or stored in any other medium, including storage in file-based archives (e.g., flat files), etc. For purposes of this section, "in bulk" access means accessing Merchant Information by means of database query, report generation or any other mass transfer of Merchant Information. Specifically, this Clause prohibits any access to Merchant Information except for access to individual records as needed for the Permitted Purpose. Givex will preserve detailed log data on all instances of attempted or successful "in bulk" access to Merchant Information and provide reports from these logs as part of its obligations under Clause 2.5 (Security Review). In the event that Merchant provides written authorization for access to Merchant Information "in bulk", Givex will (1) limit such access only to specified employees who have a legitimate business reason to access the Merchant Information, and (2) use tools that limit access and require explicit authorization and logging of all access.

2.2 Access to Merchant Extranet and Portals. Merchant may grant Givex access to Merchant Information via web portals or other non-public websites or extranet services on Merchant's or a third-party's website or system (each, an "**Extranet**") for the Permitted Purpose. If Merchant permits Givex to access any Merchant Information using an Extranet, Givex must comply with the following requirements:

2.2.1 Accounts. Givex will ensure that Givex personnel use only the Extranet account(s) designated for each individual by Merchant and will require Givex personnel to keep their access credentials confidential.

2.2.2 Restrictions. Except if approved in advance in writing by Merchant, Givex will not download, mirror or permanently store any Merchant Information from any Extranet on any medium, including any machines, devices or servers.

2.3 Data Retention and Destruction.

2.3.1 Retention. Givex will retain Merchant Information only as necessary, and as long as required for, the Permitted Purpose.

2.3.2 Return or Deletion. Givex will promptly (but within no more than ten (10) days after Merchant's request) return to Merchant and/or permanently and securely delete all Merchant Information upon and in accordance with Merchant's notice requiring return and/or deletion ninety (90) days after the earlier of completion of the Permitted Purpose or termination or expiration of the Agreement. If requested by Merchant, Givex will certify in writing that all Merchant Information has been destroyed.

2.3.3 Recovery. If Givex performs a "recovery" (i.e., reverting to a backup) for the purpose of disaster recovery, Givex will have and maintain a process that ensures that all Merchant Information that is required to be deleted pursuant to the Agreement, or this Security Policy will be re-deleted or overwritten from the recovered data in accordance with this Clause 2.3 within twenty-four (24) hours after recovery occurs. If Givex performs a recovery for any purpose, no Merchant Information may be recovered to any third-party system or network without Merchant's prior written approval. Merchant reserves the right to require a Merchant security review (in accordance with Clause 2.4 (Security Review) of the third-party system or network before permitting recovery of any Merchant Information to any third-party system or network.

2.4 Security Review.

2.4.1 Additional Risk Assessment Questionnaires. Merchant reserves the right to periodically request Givex to complete a new Merchant risk assessment questionnaire.

2.4.2 Certification. Upon Merchant's written request, Givex will certify in writing that it is in compliance with this Agreement.

2.4.3 Other Reviews. Merchant reserves the right to periodically review the security of systems that Givex uses to process Merchant Information. Givex will cooperate and provide Merchant with reasonable required information within a reasonable time frame but no more than twenty (20) days from the date of Merchant's request.

2.4.4 Remediation. If any security review identifies any deficiencies, Givex will, at its sole cost and expense, take all actions necessary to remediate those deficiencies within an agreed upon timeframe.

2.5 Security Incidents.

2.5.1 Notification. Givex will inform Merchant in writing within forty-eight (48) hours of detecting any actual unauthorized access, collection, acquisition, use, transmission, disclosure, corruption or loss of Merchant Information, or breach of any environment (i) containing Merchant Information, or (ii) managed by Givex with controls substantially similar to those protecting Merchant Information (each, a "**Security Incident**" or "**Personal Information Breach**"). Givex will include (i) the nature of the Security Incident; (ii) the likely consequences of the Security Incident; (iii) any measures taken or proposed to be taken by Givex to address the Security Incident and mitigate its possible adverse effects; and (iv) the name and contact information of an employee of Givex who shall serve as Merchant's primary contact and shall be available to assist Merchant in resolving obligations associated with a Security Incident.

2.5.2 Remediation. Givex will remedy each Security Incident in a timely manner and provide Merchant written details regarding Givex's internal investigation regarding each Security Incident. Givex will cooperate and work together with Merchant to formulate and execute a plan to rectify all confirmed Security Incidents.

2.5.3 Legal Process Notice. Givex will promptly inform Merchant when its data is being sought in response to legal process or by applicable law.