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MONERIS SOLUTIONS CORPORATION (“MONERIS”) HAS MADE AVAILABLE TO YOU THE APPLICATION PROGRAMMING INTERFACES, SPECIFICATIONS, PROGRAMMING, SOFTWARE, FILES, DATA, INFORMATION, TOOLS, ITEMS, RESOURCES, DOCUMENTATION AND ANY OTHER MATERIALS MADE AVAILABLE TO YOU FROM TIME TO TIME (COLLECTIVELY, THE “DEVELOPER TOOLS”) AS A SERVICE TO HELP ITS CUSTOMERS AND DEVELOPERS INTEGRATE WITH AND OPERATE WITH THE MONERIS GATEWAY ELECTRONIC PAYMENT PLATFORM OR ANY OTHER MONERIS SERVICES OR PRODUCTS (THE “INTEGRATION”). BY ACCESSING, DOWNLOADING OR USING THE DEVELOPER TOOLS YOU ARE AGREEING TO COMPLY AND BE BOUND BY THE TERMS OF THIS LICENSE AGREEMENT (THE “TERMS”). THE TERMS GOVERN YOUR ACCESS TO AND USE OF THE DEVELOPER TOOLS AND ANY OTHER INFORMATION, PRODUCTS, SOFTWARE AND/OR FEATURES MADE AVAILABLE TO YOU BOTH NOW AND IN THE FUTURE. MONERIS MAY, AT ITS SOLE DISCRETION, UPDATE OR REVISE THE TERMS AT ANY TIME. ANY UPDATES OR REVISIONS OF THE TERMS WILL BE EFFECTIVE IMMEDIATELY UPON POSTING ON THIS SITE. PLEASE CHECK THE TERMS PERIODICALLY FOR UPDATES OR REVISIONS. YOUR CONTINUED ACCESS OR USE OF THE DEVELOPER TOOLS FOLLOWING THE POSTING OF ANY UPDATES OR REVISIONS TO THE TERMS CONSTITUTES CONFIRMATION OF YOUR ACCEPTANCE OF THE TERMS AS UPDATED OR REVISED. IF YOU DO NOT AGREE TO THE TERMS, DO NOT USE THE DEVELOPER TOOLS. “YOU” (AND ALL DERIVATIONS THEREOF) MEANS YOU INDIVIDUALLY, AND IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, THAT LEGAL ENTITY (IN WHICH CASE YOU REPRESENT AND WARRANT THAT YOU ARE DULY AUTHORIZED TO REPRESENT AND BIND THAT LEGAL ENTITY).

### 1. License.

#### a. Grant of License.

Some of the Developer Tools may be provided by Moneris under an open source or other third-party license and such Developer Tools will be subject to the terms of the applicable license. Moneris shall identify such Developer Tools and will make available to you the applicable open source or other third-party license terms. You acknowledge and agree to use such Developer Tools in accordance with the applicable license which shall prevail and govern your use of such Developer Tools to the extent of any inconsistencies or conflict with these Terms.

For any other Developer Tools not provided under an open source or other third-party license, subject to and in consideration of your full compliance with the Terms, Moneris grants you a revocable, non-exclusive, non-transferable, as-is, limited license to use the Developer Tools to: (i) use, reproduce, modify and create derivative works of the components of the Developer Tools solely for the purposes of developing, testing and manufacturing software programs or other solutions to be used for the Integration (the “**Payment Solution**”); (ii) distribute, sell or otherwise provide the Payment Solution that includes components of the Developer Tools to your end users; and (iii) sublicense such components of the Developer Tools as incorporated into such Payment Solutions to your end users subject to the limitations and restrictions set forth in these Terms. This license relates solely to Integration activities and does not grant you any rights or license to conduct or receive payment card processing and related services from Moneris nor does it grant you a certification that any Payment Solution developed by you will meet Moneris’ requirements. In order for a Payment Solution to be used by a merchant for payment card processing or related services from Moneris, the merchant must enter into a payment card processing agreement with Moneris and the Payment Solution may need to be certified by Moneris pursuant to a separate certification agreement. Neither the foregoing license nor any other provision of these Terms grant you any license or right to use and you may not use any Moneris trademarks or any other intellectual property of Moneris in any manner except as may be expressly permitted by Moneris in advance in writing.

- b. Limitations on License. Except as expressly permitted under Section 1(a), you may not:
- i. use the Developer Tools for any purpose other than completing or maintaining the Integration;
  - ii. directly or indirectly rent, lease, sub-license, assign, loan, sell or otherwise charge any party for access to the Developer Tools;
  - iii. make any copies, republish, post, transmit, sell or otherwise distribute the Developer Tools;
  - iv. remove, alter or destroy any proprietary, trademark or copyright markings or confidentiality legends placed upon or contained within the Developer Tools;
  - v. use the Developer Tools in a manner that is inconsistent with the intellectual property rights that Moneris has in the Developer Tools or for purposes other than in connection with the Integration;
  - vi. reverse engineer, disassemble, reconstruct, decompile or attempt to derive the source code of any software or object code furnished as part of the Developer Tools;
  - vii. use the Developer Tools for any illegal, unauthorized or otherwise improper purposes, or in any manner that would breach these Terms, or breach any laws or regulations (including Payment Industry Rules, as such term is defined below) or violate any rights of third parties, or expose Moneris to legal liability in your use of the Developer Tools;
  - viii. transmit any viruses, worms, defects, Trojan horses, spyware, adware or other malicious programs or code; and
  - ix. restrict, inhibit, or engage in any activity that prevents any other developer from using the Developer Tools.
2. **Changes to Developer Tools.** Moneris may discontinue, modify, or change the Developer Tools or its services and systems at any time. Such modifications may be as a result of changes in the rules or procedures of any party (and its successors and assigns) having authority over credit card, debit card or other payment systems (collectively, the "**Payment Industry Rules**"), a change in applicable law (including governmental policies), or as a result of a decision by Moneris in its sole discretion. Such changes may require you to update the Payment Solution at your own cost so that it remains compatible with and interfaces accurately with our systems. Moneris will have no liability or obligation to you with regard to any modifications or changes it makes to the Developer Tools or its services or systems.
3. **No Maintenance and Support.** Moneris has no obligation to provide you with maintenance and support for the Developer Tools.
4. **Proprietary Rights.** The Developer Tools are licensed and not sold to you by Moneris. You acknowledge that all rights, title, ownership and interest in and to any and all intellectual property rights in the Developer Tools, including, without limitation, patent, trademark, copyright and trade secret rights remain with Moneris and its licensors and that you do not have or acquire any rights, express or implied, in the Developer Tools except those rights expressly granted under these Terms. You shall retain ownership of the Payment Solution developed by you in accordance with these Terms, subject to Moneris' ownership of any portion of the Developer Tools incorporated in the Payment Solution.
5. **Feedback.** You may provide feedback, suggestions, comments, improvements and ideas (collectively "**Feedback**") to Moneris but you are not required to do so. Moneris is not required to hold such feedback in confidence. Moneris may use Feedback for any purpose without obligation of any kind. You assign all right, title, and interest in and to any Feedback that you provide to Moneris without any obligation of confidentiality, attribution,

accounting, compensation or other duty to account. To the extent a license is required under your intellectual property rights to make use of the Feedback, you grant Moneris an irrevocable, non-exclusive, perpetual, worldwide, transferable, sublicensable, royalty-free, fully paid-up license to use the Feedback in connection with Moneris' business. You forever waive and agree never to assert against Moneris, its affiliates, successors, business partners and licensees and their respective officers, directors, shareholders, employees, agents and advisors (the "**Moneris Parties**") any and all Moral Rights, as defined below, that you or your employees and subcontractors may have in the Feedback, to the extent permitted by applicable law. You agree to cause your employees and subcontractors to execute such assignments and licenses in your favor, and to irrevocably waive in writing in your favor any and all Moral Rights, as are required in each case under applicable law to grant the foregoing licenses and to effect the foregoing waivers. "**Moral Rights**" means any right to claim authorship of a work, any right to object to any distortion or other modification of a work, and any similar right, existing under the law of any country, or under any treaty.

6. **Termination.** Moneris may terminate your rights or licenses to use the Developer Tools (the "**Termination**") at any time, without cause or prior notice. In addition, your license to use the Developer Tools will terminate automatically if you breach any of the Terms. Moneris shall not be liable to you or any third party for Termination. The terms and conditions contained in these Terms that by their nature and context are intended to survive the Termination shall survive, including, but not limited to, Section 4 (Proprietary Rights), Section 5 (Feedback), Section 6 (Termination), Section 7 (Indemnification), Section 8 (Exclusion of Warranties and Liability) and Section 9 (General).
7. **Indemnification.** You agree to fully indemnify, defend and hold harmless the Moneris Parties from and against any claims, losses, judgments, liabilities, damages, costs and expenses (including, without limitation, reasonable legal fees), incurred by any of the Moneris Parties due to or resulting from: (a) your use of the Developer Tools; (b) your breach of these Terms; (c) the Payment Solution or the Integration; or (d) use of the Payment Solution or the Integration by merchants or their customers, including claims of intellectual property infringement, breach of privacy or violation of applicable laws arising under any of the foregoing clauses. You may not enter into any settlement that purports to bind Moneris without our prior express written authorization.
8. **Exclusion of Warranties and Liability.**
  - A. EXCLUSION OF WARRANTY. THE DEVELOPER TOOLS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND YOU AGREE TO USE THEM ENTIRELY AT YOUR OWN RISK. MONERIS DOES NOT WARRANT THAT THE DEVELOPER TOOLS WILL MEET YOUR REQUIREMENTS OR THAT THEY WILL BE ERROR FREE. YOU ACKNOWLEDGE AND AGREE THAT THE REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY CONTAINED IN THESE TERMS ARE THE ONLY REPRESENTATIONS, WARRANTIES, AND COVENANTS PROVIDED BY MONERIS, AND THERE ARE NO OTHER REPRESENTATIONS, WARRANTIES, COVENANTS OR CONDITIONS, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY OF INFORMATION, NON-INFRINGEMENT OR TITLE AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DENIED AND DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY LAW. IT IS YOUR SOLE RESPONSIBILITY TO DETERMINE WHETHER THE DEVELOPER TOOLS ARE SUITABLE AND ADEQUATE FOR YOUR NEEDS. YOU CONFIRM THAT YOU HAVE NOT RELIED ON ANY REPRESENTATION, WARRANTY, CONDITION, COVENANT OR PROMISE MADE BY MONERIS WHICH HAS NOT BEEN EXPRESSLY STATED IN THESE TERMS.
  - B. LIMITATION OF LIABILITY. THE MONERIS PARTIES WILL NOT BE LIABLE TO YOU, UNDER THESE TERMS OR OTHERWISE, FOR ANY DAMAGES, LOSSES, COSTS, EXPENSES OR ANY OTHER FINANCIAL LIABILITY

WHATSOEVER, INCLUDING WITHOUT LIMITATION: (I) DAMAGES CAUSED BY ANY DEFECT OR ERROR IN THE DEVELOPER TOOLS, OR BY ANY INADEQUACY OF THE DEVELOPER TOOLS FOR ANY PURPOSE; AND (II) DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES, DAMAGES OR EXPENSES SUFFERED BY YOU OR ANY THIRD PARTY IN CONNECTION WITH OR ARISING OUT OF THE USE OF THE DEVELOPER TOOLS (INCLUDING WITHOUT LIMITATION, CLAIMS THAT THE DEVELOPER TOOLS INFRINGE ANY PATENT, COPYRIGHT, TRADE-MARK, TRADE SECRET OR OTHER PROPRIETARY OR CONTRACTUAL RIGHT OR OBLIGATION, LOST PROFITS AND ANY OTHER COMMERCIAL OR ECONOMIC LOSS). THIS PROVISION APPLIES EVEN IF MONERIS HAS BEEN NOTIFIED OF THE POSSIBILITY OF THESE DAMAGES AND IRRESPECTIVE OF THE CAUSE OF ACTION, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, TORT AND NEGLIGENCE. YOU WAIVE ANY AND ALL CLAIMS, NOW KNOWN OR LATER DISCOVERED, THAT YOU MAY HAVE AGAINST THE MONERIS PARTIES ARISING OUT OF YOUR USE OF THE DEVELOPER TOOLS, THE INTEGRATION, THE PAYMENT SOLUTION OR THESE TERMS. NOTWITHSTANDING THE FOREGOING, THE TOTAL LIABILITY OF THE MONERIS PARTIES TO YOU FOR ALL DAMAGES, LOSSES AND CAUSES OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE), OR OTHERWISE SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED ONE HUNDRED DOLLARS (\$100).

9. **General.**

- a. Any notice given to Moneris under these Terms shall be in writing and shall be delivered personally or by certified mail addressed as follows:

Moneris Solutions Corporation  
3300 Bloor Street West  
Toronto, Ontario M8X 2X2  
Canada

Attn: Chief Technology Officer  
Fax: 416.734.1052

Notices delivered by personal delivery or fax will be deemed to have been received five (5) business days after the date notice is received by Moneris.

- b. Any notice from Moneris to you may be posted on this site and shall be effective one (1) business day after posting. It is your responsibility to monitor this site for notices posted by Moneris. You also agree that Moneris, in its sole discretion, may send notice to you to the e-mail address that you have provided to Moneris, if any, and any such notice shall be deemed to be effective one (1) business day after the date sent.
- c. These Terms constitute the entire agreement between you and Moneris with regard to their subject matter. In addition to the terms and conditions in these Terms, your use of the Development Tools is subject to any other agreements between you and Moneris relating to other products and services you obtain from Moneris. Moneris may also make additional material available for download or use which may have additional terms and conditions. All additional terms and conditions are incorporated into and are a part of these Terms. In the event of a conflict between these Terms and any additional terms and conditions, the additional terms and conditions will control only with respect to their specific subject matter. If any provision(s) of these Terms is found to be illegal, unenforceable in law or equity, or against public policy, the offending provision(s) will be severed, and that finding will not invalidate any other provision of these Terms. The failure by Moneris to exercise or enforce any right hereunder shall not operate as a waiver of Moneris' right to exercise or enforce such right or any other right in the future.

- d. You acknowledge and agree that your breach of these Terms relating to the licenses granted herein may result in irreparable harm and permanent injury to Moneris for which monetary damages would be an inadequate remedy. Therefore, in addition to any and all remedies available at law, Moneris will be entitled to seek an injunction or other equitable remedies in all legal proceedings in the event of any threatened or actual breach of any or all such provisions.
- e. You may not assign or transfer your rights or obligations under these Terms. Any purported assignment in violation of the foregoing will be invalid. Moneris may assign its rights and obligations under these Terms without your prior written consent.
- f. These Terms shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein without regard to principles of conflicts of law or the United Nations Convention for Contracts for the International Sale of Goods, which is explicitly excluded, and shall be treated in all respects as an Ontario contract.
- g. Any dispute, controversy or claim arising out of or relating to these Terms or your use of the Developer Tools irrespective of the cause of action, including without limitation breach of contract, tort or negligence (“**Claims**”) shall be referred to and finally resolved by arbitration (to the exclusion of any court of law otherwise having jurisdiction) by notice to the other party (“**Notice of Arbitration**”). Upon the issuance of Notice of Arbitration by either party, Moneris, in its sole discretion, shall choose either a single arbitrator or a panel of three arbitrators. The arbitration shall be held in Toronto, Ontario. The arbitration shall proceed in accordance with the provisions of the *Arbitration Act* (Ontario), except for any Claims involving a party that is not a resident of Canada, in which case the arbitration shall proceed in accordance with the *International Commercial Arbitration Act* (Ontario). The date of hearing must be held on the date(s) determined by the arbitrator(s). The decision arrived at by the arbitrator(s) shall be final and binding and no appeal shall lie therefrom. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. You shall bear the costs of the arbitration (including with respect to the payment of fees and disbursements related to the arbitration). All matters relating to the arbitration, including without limitation any Claim, the arbitration and any orders, awards or judgments related to the arbitration, are confidential information and you agree not to disclose such confidential information to any third party.
- h. You agree that you may bring or participate in claims against Moneris in your individual capacity only and not as a plaintiff or class member in any purported class or representative proceeding. Unless you and Moneris agree otherwise, the arbitrator(s) may not consolidate or join the claims of other persons who may be similarly situated, and may not preside over any form of a representative or class proceeding.

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