

## MONERIS KOUNT SERVICES SCHEDULE

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This Schedule to your Moneris Merchant Agreement (the “**Agreement**”) contains the additional terms and conditions that apply to the Moneris Kount Services (as defined below) that we provide to you. Please ensure that you read carefully this Schedule, as your acceptance of its terms and conditions will occur when you first use the Moneris Kount Services. For greater certainty, this Schedule is part of the Agreement and remains subject to all of the other applicable terms and conditions of the Agreement. To the extent of any inconsistency between the terms and conditions of this Schedule and any other provision of the Agreement, the terms and conditions of this Schedule will govern with respect to the Moneris Kount Services. We can change this Schedule at any time by giving you notice in accordance with the Agreement. Your continued use of the Moneris Kount Services after such notification constitutes acceptance of any amendment, restatement, supplement or any other modification to this Schedule.

**1. Definitions.** Capitalized terms used and not defined herein will have the respective meanings given to such terms in the Agreement.

**1.1 “Affiliate”** of a Party means any entity which directly or indirectly controls, is controlled by, or is under common control with, such Party. As used in this definition, “control” (and its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through beneficial ownership of securities or other ownership interests, by contract or otherwise).

**1.2 “Applicable Privacy Laws”** means federal and provincial privacy laws relating to the collection, use, storage, or disclosure of Personal Information as may be applicable to the Moneris Kount Services, or to Merchant or Moneris, or to Merchant’s customers, or any one of them.

**1.3 “Data Collector”** means the HTML code described in the Technical Specifications Guide.

**1.4 “Indications”** are the authorization code or risk control opinions generated by the Risk Inquiry System and returned in response to a Risk Inquiry.

**1.5 “Intellectual Property”** has the meaning ascribed to that term in Section 3.

**1.6 “Merchant Communications”** means any and all data (which may include Personal Information) provided by, or on behalf of, Merchant and used by Moneris and/or Service Provider for the provision of the Moneris Kount Services, including any data collected by the Data Collector and any Moneris Provided Data.

**1.7 “Merchant Order Form”** means any webpage or application where Merchant’s customers enter information for the purpose of: (a) initiating a payment; (b) submitting an application; (c) opening a new account; (d) accessing an existing account; or (e) initiating any action for which Merchant may request an Indication or other reporting metrics associated with the provision of the Moneris Kount Services.

**1.8 “Moneris Kount Services”** means the fraud detection and other services provided by Moneris and/or Service Provider to Merchant in accordance with the provisions of this Schedule, including the submission of Merchant Communications for use in processing Risk Inquiries in order to get Indications.

**1.9 “Moneris Provided Data”** means data with respect to Merchant Transactions, Authorizations and other information in the possession of Moneris, if any, which may be used by Moneris and/or Service Provider in connection with the provision of the Moneris Kount Services to Merchant.

**1.10** “**Personal Information**” means: (a) any information about an identifiable individual collected and disclosed or otherwise provided to Moneris and/or Service Provider by Merchant or its customers pursuant to this Schedule, or (b) if applicable, any more restrictive definition required by applicable law.

**1.11** “**RIS Update**” means updated Transaction information transmitted through the Risk Inquiry System in connection with the Moneris Kount Services.

**1.12** “**Risk Inquiry**” means any transaction initiated by Merchant in which the Risk Inquiry System is queried, including, but not limited to, for the purposes of obtaining an Indication.

**1.13** “**Risk Inquiry System**” means the primary technical interface through which Merchant initiates Risk Inquiries and RIS Updates, and through which Moneris and/or its Service Provider delivers an Indication to Merchant as part of the Moneris Kount Services.

**1.14** “**Service Provider**” means Kount Inc., or any of its Affiliates, agents, subcontractors or any other entity that Moneris may use in order to provide some or all of the Moneris Kount Services to Merchant.

**1.15** “**Technical Specifications Guide**” means, where applicable, the then-current technical instructions and manuals regarding the Moneris Kount Service made available to Merchant by Moneris or its Service Provider as they may be modified and amended from time to time.

## **2. Moneris’ and Merchant’s Responsibilities**

**2.1 Moneris’ Responsibilities.** Subject to Merchant’s timely compliance with Section 2.2, Moneris will:

- (a) Provide the Moneris Kount Services to Merchant as set out in this Schedule and the Technical Specifications Guide;
  - (b) Provide Merchant with access to online reports about the Moneris Kount Services;
- and
- (c) If required, provide integration and maintenance support and assistance to Merchant with respect to the Moneris Kount Services in accordance with this Schedule.

Moneris may perform any or all of its obligations under this Schedule through an Affiliate or the Service Provider, provided that Moneris remains responsible to the Merchant for the performance of its obligations in accordance with the terms of this Schedule.

**2.2 Merchant’s Responsibilities.** Merchant will:

- (a) If applicable, complete any required integration and install and maintain a functioning Data Collector on all Merchant Order Forms in accordance with the Technical Specifications Guide;
- (b) Provide Moneris and/or the Service Provider with the Merchant Communications and any other data required for the provision of the Moneris Kount Services in accordance with the Technical Specifications Guide;
- (c) Initiate a real-time Risk Inquiry through the Risk Inquiry System for each Transaction for which an Indication is requested;
- (d) In all instances where Merchant requests an Indication without submitting bank authorization results, Merchant will provide Moneris with RIS Updates and Moneris may use any Moneris Provided Data, if available, for the purposes of such RIS Update; and

(e) Use the Moneris Kount Services in accordance with Card Brand Rules and Regulations and applicable laws, including Applicable Privacy Laws.

### **2.3 Merchant Communications and Use of the Moneris Kount Services.**

(a) Merchant represents and warrants to Moneris that the Merchant Communications have been legally obtained and collected by Merchant in compliance with all applicable laws (including Applicable Privacy Laws), rules and regulations, Merchant's applicable stated privacy policies, terms of purchase and sale, return or other policies, standards and notices provided or made available to Merchant's customers and that Merchant has all necessary rights and authority to disclose the Merchant Communications to Moneris and the Service Provider to be used by them to provide the Moneris Kount Services in accordance with this Schedule.

(b) Merchant hereby grants to Moneris a non-exclusive, fully-paid license and right, with the right to pass on and sub-license such license and right to the Service Provider, to collect, store, use (including to create or otherwise derive data from), handle, reproduce, transfer, disclose or transmit the Merchant Communications, Indications, online reports and other data provided in connection with the Moneris Kount Services to: (i) provide the Moneris Kount Services to Merchant (including any required maintenance, technical and other support, troubleshooting, reporting, etc.), (ii) develop and provide fraud detection and mitigation services or other products that may be offered to any customers of Moneris or the Service Provider, (iii) perform research and development activities and statistical analysis, and (iv) for any other purpose permitted by applicable laws (including Applicable Privacy Laws).

(c) Merchant is solely responsible for the content and accuracy of any information, including without limitation Merchant Communications, provided in connection with this Schedule, and Moneris and Service Provider take no responsibility for reviewing or checking the accuracy thereof. Merchant agrees that (i) no Indication or related information provided by Moneris or Service Provider in connection with this Schedule shall be considered to be a consumer report subject to any applicable consumer reporting legislation, including the *Consumer Reporting Act (Ontario)*, or any similar statute under Canadian federal or provincial laws, fair credit reporting laws and any similar applicable statute (collectively, "**Consumer Reporting Legislation**"); and (ii) Merchant will not use the Moneris Kount Services for making credit eligibility decisions, for determining a customer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living or for any other purpose set out in any Consumer Reporting Legislation.

## **3. Intellectual Property**

**3.1** Moneris and the Service Provider, as applicable, retain all ownership, interest and title in and to any and all patents, copyrights, trademarks, trade secrets, computer programs, related documentation, technology, know how, processes, and other intellectual property developed by them (or their predecessor-in-interest) and provided or made accessible to the Merchant in connection with the Moneris Kount Services (collectively, the "**Intellectual Property**") and no license to any Intellectual Property is granted, whether by implication, estoppel, or otherwise by Moneris or Service Provider to Merchant, except for the right to use the Moneris Kount Services in accordance with this Schedule. The Merchant will not reverse-engineer, disassemble or decompile the Intellectual Property of Moneris or the Service Provider nor transfer, sublicense or otherwise distribute or give any third party access to the Intellectual Property of Moneris or the Service Provider without the prior written consent of Moneris.

## **4. Indemnity**

**4.1** Merchant will defend, indemnify, and hold harmless Moneris and its employees, directors, officers, subcontractors, Service Provider and agents from and against any damages, losses, liabilities, fines, penalties, assessments, fees, costs or expenses, including reasonable attorneys' fees and costs relating to any third party action, claim, demand, dispute, suit, investigation, governmental action, judgment, or any other legal proceeding against any of them, to the extent arising from or relating to:

(a) Merchant's use of the Moneris Kount Services, the Indications or any reports or other data provided by Moneris or Service Provider to Merchant pursuant to this Schedule, including any refusal by Merchant to process a Transaction based on the Moneris Kount Services or any Indication provided to Merchant hereunder;

(b) any breach by Merchant of this Schedule, including the representations and warranties regarding the Merchant Communications;

(c) any violation of the Intellectual Property rights of Moneris or the Service Provider by Merchant; or

(d) the gross negligence or willful misconduct of Merchant or its employees, agents or representatives.

## **5. No Warranties. Limitation of Liability**

**5.1** The Moneris Kount Services are provided to Merchant on an "as is" and "as available" basis. Moneris does not provide any warranty with respect to and specifically disclaims any warranties and conditions with respect to the operation of the Moneris Kount Services or any particular application or use thereof, whether express, implied, statutory, or otherwise, including without limitation, the implied warranties and conditions of merchantability, fitness for a particular purpose, workmanlike service, and non-infringement and any warranties that may arise from a course of dealing, course of performance or trade practice. Moneris does not warrant that the Moneris Kount Services will be uninterrupted or error-free. For greater certainty, Moneris is entitled at any time, and without prior notice, to interrupt Merchant's access to the Moneris Kount Services for any reason, including without limitation for security considerations or maintenance work.

**5.2 Merchant acknowledges and agrees that the Moneris Kount Services and Indications represent a combination of factors that refer to potential fraud indicators and do not constitute a guarantee, warranty or representation from Moneris or the Service Provider that a particular Transaction is: (a) entered into by the actual authorized Cardholder; or (b) enforceable against the actual Cardholder. For added clarity, the Moneris Kount Services are provided at the Merchant's own risk. Moneris or the Service Provider shall not be liable to Merchant for any refunds, reversals, fraud losses, Chargebacks or any other liabilities related to the Moneris Kount Services or any Transaction.**

**5.3 NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SCHEDULE OR IN THE AGREEMENT, IN NO EVENT WILL MONERIS' TOTAL LIABILITY FOR ANY AND ALL DAMAGES ARISING UNDER THIS SCHEDULE FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY EXCEED THE TOTAL FEES PAID BY MERCHANT TO MONERIS FOR THE MONERIS KOUNT SERVICES DURING THE THREE (3) MONTHS IMMEDIATELY PRIOR TO THE DATE OF THE EVENT GIVING RISE TO SUCH LIABILITY, LESS ANY COSTS AND EXPENSES INCURRED BY MONERIS IN PROVIDING THE MONERIS KOUNT SERVICES TO MERCHANT DURING SUCH THREE (3) MONTH PERIOD. FOR GREATER CERTAINTY, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SCHEDULE, IN NO EVENT WILL MONERIS BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOSS OF PROFIT, LOST REVENUES, COST OF PROCUREMENT OF SUBSTITUTE SERVICES, LOST BUSINESS OPPORTUNITIES OR LOSS OF GOODWILL, FOR ANY MATTER ARISING OUT OF OR RELATING TO THIS SCHEDULE OR ITS SUBJECT MATTER, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT OR OTHERWISE EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**5.4** The Parties have agreed that each provision of this Schedule that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages represents an agreed allocation of the risks between the Parties. This allocation is reflected in the pricing offered by Moneris to Merchant for the Moneris Kount Services and is an essential element of the basis of the bargain between the Parties. Each of these provisions is severable and independent of all other provisions of this Schedule and each of these provisions will survive termination of this Schedule and will apply even if any limited remedy specified in this Schedule is found to have failed in its essential purpose.

## 6. Confidentiality.

**6.1** Each Party may provide to the other Party certain confidential, proprietary, trade secret, business or technical information in connection with this Schedule, (which includes the Technical Specifications Guide), whether or not marked as confidential (together, "**Confidential Information**"). Confidential Information does not include information that a Party can establish was (a) in the public domain at the time of disclosure, or subsequently entered the public domain, through no breach of this Schedule; (b) in that Party's possession at the time of disclosure and was not obtained from the other Party; (c) received from a third party who, to the receiving Party's knowledge, did not disclose it in violation of any confidentiality agreement; or (d) independently developed by a Party without use of the other Party's Confidential Information.

**6.2** Each Party shall protect the other Party's Confidential Information with at least that degree of care which it uses to protect its own confidential information. Neither Party shall disclose, publicize, or distribute Confidential Information except:

- (a) as otherwise permitted by this Schedule, including for clarity, as contemplated in Section 2.3(b);
- (b) to its employees, agents, service providers and/or Affiliates on a need-to-know basis for purposes of achieving the purposes of the Schedule, under substantially similar confidentiality obligations;
- (c) to attorneys, accountants or other professional advisors under a duty of confidentiality;
- (d) when required by law or order of a governing legal or regulatory authority, with prior notice to the other Party unless explicitly prohibited in writing;
- (e) by a Party to its bankers or other financial institutions, to the extent required for the purpose of raising funds or maintaining compliance with credit arrangements, under a duty of confidentiality; or
- (f) upon written agreement between the Parties.

## 7. Term; Termination

**7.1 Term.** Subject to Section 7.2, the term of this Schedule will continue for the duration of the term of the Agreement.

**7.2 Termination.** This Schedule may be terminated at any time as follows:

- (a) by notice in the event that the other Party has materially breached the Schedule if the breach has not been cured within thirty (30) days of receipt of notice to the Party identifying such breach;
- (b) by mutual written agreement of the Parties;
- (c) by either party with thirty (30) days' prior notice to the other; or
- (d) by Moneris with notice to the Merchant in the event that the agreement between Moneris and the Service Provider is terminated for any reason.

**7.3 Survival.** Sections 2.3, 3, 4, 5, 6, 7.3 and 8 will survive termination of this Schedule and remain in full force and effect in accordance with their terms following termination of the Schedule.

## 8. General Provisions

**8.1 Independent Contractors.** The Parties and their respective personnel are and will be independent contractors and neither Party, by virtue of this Schedule, will have any right, power or authority to act or create any obligation, express or implied, on behalf of the other Party.

**8.2 Force Majeure.** Neither Party will be responsible or liable to the other Party for any failure or delay in its performance under this Schedule (except for any payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortage of or inability to obtain energy, raw materials or supplies, war, terrorism, riot or acts of God (each a "**Force Majeure**"). In the event of a Force Majeure, the Party who is unable to perform or whose performance is delayed will promptly notify the other Party of the Force Majeure and will use its best efforts to resume performance.

**8.3 Severability.** If any provision of this Schedule is determined to be invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted, and the balance of the Schedule will remain enforceable.