



# Corporate & Commercial Financial Services Agreement



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# Introduction

## *Welcome to Scotiabank Corporate and Commercial Banking*

Knowing how to meet business expectations begins by working with a bank that is committed to meeting your needs. At Scotiabank, our Corporate and Commercial Banking team works with you to understand your specific business needs and deliver flexible, customized financial solutions to help you achieve your goals. As your financial partner, we know how to use our extensive industry knowledge and global expertise to help you navigate the ever-changing marketplace.

## *The Corporate & Commercial Financial Services Agreement*

In this booklet, we explain the types of services we offer, along with the terms and conditions that govern our Business Accounts, as well as the following Services:

- Automated Banking Services;
- ScotiaCard\* Banking Card;
- Scotia OnLine\* Internet Banking;
- Cash Management Services; and
- Scotiabank Merchant Services.

To benefit from these Services, you must open a Business Account and you must not in any circumstances utilize any personal accounts opened by you for business purposes. While we offer a variety of accounts and Services designed to meet the needs of our Commercial and Corporate Clients, not all products or Services are available in every country where we operate.

As you must be approved for all products and Services, we require that you complete the Business Accounts and Services Application (the “Business Account Application”) or otherwise provide us with the information requested in the Business Account Application we provide to you. You certify that any and all information and documents (including evidence of incorporation and continuing good status) submitted by you to us are true, correct and complete. You also agree to promptly notify us of any changes to any of this information or to any of the documents you have provided to us.

You must also apply separately for and be approved for our financing and risk management solutions, including our trade finance services and foreign exchange services. Please contact your branch or a Commercial Banking Centre for more information.

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## ***Terms we use in this Agreement***

**Agreement** means collectively this Corporate & Commercial Financial Services Agreement (including the Cash Management Services Agreement, the ScotiaCard Agreement, the Scotiabank Merchant Services Agreement and the Scotiabank Merchant Services Agreement Addenda), the Business Accounts & Services Application, any Service Request & Pricing Schedule, all certifications and consents provided in any Application for banking services and any other document or agreement which is incorporated by reference to this Agreement.

**You and your** mean the business customer, all partners (in the case of a partnership) and a company (in the case of a corporate entity that is incorporated), or any director, officer, partner or signing officer to this Business Account. It also means any individual who has provided a guarantee for any financial or insurance product or service offered by us.

**We, our, us, Scotiabank, and the Bank** mean, as applicable, The Bank of Nova Scotia and its branches and subsidiaries and affiliates operating outside of Canada, including but not limited to, its branches and agencies in the United States, Antigua, Barbados, Dominica, the Dominican Republic, Grenada, Guyana, Haiti, Panama, St. Maarten, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines and the U.S. Virgin Islands, and its subsidiaries, The Bank of Nova Scotia Jamaica Limited, Scotiabank Anguilla Limited, Scotiabank (Bahamas) Limited, Scotiabank (Belize) Ltd., Scotiabank (British Virgin Islands) Limited, Scotiabank & Trust (Cayman) Ltd., Scotiabank de Costa Rica, S.A., Scotiabank El Salvador, S.A., Scotiabank de Puerto Rico, Scotiabank (Turks and Caicos) Ltd., Scotiabank Trinidad and Tobago Limited.

**Scotiabank Group** means collectively, The Bank of Nova Scotia and all its subsidiaries and affiliates.

### ***Other Definitions you need to know:***

**Any Branch Banking (“ABB”) Deposit Only Service** permits you to deposit monies at another Scotiabank branch in the country where your account is domiciled. This privilege is subject to restrictions and we reserve the right to limit or remove such Services at our discretion.

**Automated Banking Services** are channels where you can access your designated Business Accounts and may, in your jurisdiction, include:

- Designated Automated Teller Machines (ATMs) for deposits only
- Telephone banking through our Contact Centres or Business Support Units
- Cash Management Services

**Bill Payment Company** refers to a business, company or utility company that has an arrangement with Scotiabank to be a payee of bill payments through the service for which you have been registered, by Scotiabank for branch, telephone banking, Scotia OnLine Internet Banking or Cash Management Services access.

**Business Accounts** are our business chequing and savings accounts.

**Card** means an unexpired Visa card, MasterCard card, American Express card, Discover card, debit card or any other card that is valid or accepted by the Bank or the Merchant as the case may be.

**Debit Point of Sale (POS)** refers to the point or place at which a transaction is concluded by whatever means and includes, but is not limited to, transactions concluded in person, over the telephone, on the Internet or by mail order.

**Debit transactions** include any type of withdrawal, including cash withdrawals, cheques and instruments drawn on your accounts, funds transfers (regardless of whether the transfer is to another Scotiabank account), bill payments, bank drafts, money orders, preauthorized payments and any other methods of direct payments.

**Domicile account or domicile branch** refers to the country in which your branch account is located.

**Electronic Signature** refers to each combination of numbers and/or letters selected by you for your exclusive use as a means of your authorisation to use certain Services that are available from us from time to time. Your Electronic Signature includes, but is not limited to your Personal Identification Number ("PIN") for ScotiaCard Banking Card, for use at branches and Automated Teller Machines (ATMs) security codes and passwords for use with telephone banking, Scotia OnLine Internet Banking and Cash Management Services.

**Inactive Business Account** means an inactive or dormant Business Account as a result of you not completing a transaction or requesting a statement of account on your Business Account within the period stipulated by your domicile branch. Inactive Business Accounts cannot be accessed through Automated Banking Services or through any other Scotiabank branch.

If your Business Account becomes inactive or dormant, we require that you visit your domicile branch and present acceptable proof of your identity and address to reactivate your Business Account. If your Business Account remains inactive, we will follow the laws of the country in which your Business Account is domiciled concerning inactive accounts, which may include transferring your money to government authorities after a specified period of time and following certain legal procedures.

If you register for telephone banking you will not be able to access the telephone banking service if you fail to activate the service for a period exceeding six (6) months.

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**ScotiaCard Banking Card** (“ScotiaCard Banking Card”) means the banking card issued to you by us upon your request that gives you access to Automated Banking Services and other services set out in this Agreement. For sole proprietorships the ScotiaCard Banking Card provides you full functionality at our Automated Banking Services. For incorporated entities and partnerships, the ScotiaCard Banking Card provides you only deposit functionality.

**Self-service transactions** are transactions processed through a Scotiabank ATM, telephone banking services, Scotia OnLine Internet Banking or Cash Management Services.

**Service** means any personal or business banking, financial product or service offered by us and may include insurance and brokerage products or services that are offered by our subsidiaries.

**Service Request & Pricing Schedules** are the application forms that are used when you subscribe to either the Cash Management Services or the Scotiabank Merchant Services, and that form part of this Agreement as applicable.

**Taxes** mean any present or future levy, impost, duty, stamp duty, charge, assessment or fee by any government authority, monetary agency or central bank or other taxing authority in respect to any payment due under this Agreement. These include interest, penalties and any additions to them.

**Teller-assisted transactions** are transactions that are processed directly with a teller or a bank officer at a Scotiabank branch.

### ***Scope of this Agreement***

By signing the Business Account Application, you acknowledge that you have received this Corporate & Commercial Financial Services Agreement and agree to the following terms and conditions governing your Business Accounts. If you opened a Business Account over the telephone or the Internet, your use of the account will indicate your agreement with the following terms and conditions governing the Business Account.

This Agreement contains terms and conditions that apply to all Business Accounts and Services. It also contains specific terms and conditions for your use of:

- Automated Banking Services;
- ScotiaCard Banking Card;
- Scotia OnLine® Internet Banking;
- Cash Management Services; and
- Scotiabank Merchant Services.

## *Operation of this Agreement*

This Agreement, and the instructions given by you under it, replaces all previous agreements we have entered into with you, and this Agreement shall remain in force and can be relied upon by us until we receive your written notice of new instructions.

The terms and conditions in this Agreement are binding on you and any person who succeeds you (including trustees, receivers, heirs, executors, administrators and other legal representatives) or takes on your obligations. You may not assign any Business Account any Service, or this Agreement without getting our written permission first. You will notify us immediately if you transfer or sell any substantial part (at least 25% of the assets or share capital) of your business.

This Agreement and all transactions contemplated under it and any claim, dispute or controversy relating to this Agreement and all Business Accounts, products and Services shall be governed, construed and interpreted in accordance with the laws of the country where your Business Account or Service is domiciled, and you agree to submit only to the jurisdiction of the courts of that country.

We can add, modify, amend or change the terms and conditions of this Agreement or any Service at any time and from time to time. Notice of additional or amended terms and conditions may be given to you by electronic communication or by posting a notice(s) in our branches (or ATM screens or posted on our public website) and any of these methods will be adequate delivery of notice. You agree that any such notice of changes in the terms and conditions of the Agreement will be binding upon you and forms part of this Agreement without requiring your signature. You will be deemed to receive notice five (5) business days after mailing or at the time of a personal delivery, the sending of an electronic communication or the posting of a notice in our branches (or on your monthly statements, ATM screens or posted on our public website). If we both post a notice in our branches and send you a notice, the effective time of notice will be the date of posting in our branches (or ATM screens or posted on our public website). If any part of this Agreement is not enforceable, the remaining provisions remain valid and enforceable.

We may close your Business Account or terminate any Service under this Agreement without notice to you if you do not operate your Business Account or Service in a satisfactory manner, for example, if you maintain an unauthorized overdrawn balance, issue frequent non sufficient funds (NSF) cheques, breach any terms and conditions of this Agreement, have long outstanding unpaid service charges or if you use the account for illegal or improper purposes. We may close your account or terminate any Service under this Agreement without reason by giving you thirty (30) days' written notice.

If you are a non-resident of the country where your Business Account is domiciled, you are advised that offshore banking transactions may have tax consequences in the

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country where your account is domiciled and/or in your home country. Accordingly, if you are a non-resident, you should consult with and obtain prior written advice for such transactions from qualified tax and/or legal advisors. We may request a copy of such advice when opening any Business Account or Service or anytime thereafter.

We will withhold taxes on payments to you only where required to do so by law, otherwise you are responsible for any taxation that may be incurred on your Business Accounts or Services. If we are required to make any deduction or withholding of any Taxes for payments to us, then the amount of the payment to us will be increased by the amount necessary to pay such Taxes. You agree to indemnify us for all losses, costs, interest payments caused by your failure to pay such Taxes and any additional costs due to failure to file necessary returns or information with government authorities.

### ***Special terms for Partnerships or Joint Ventures***

If you are a partnership or joint venture, each individual or entity which is a member of the partnership or joint venture (but not the limited partners of a limited partnership) is jointly and severally responsible for:

- all obligations to provide any money needed to fund the Business Account;
- all present and future transactions entered into or which may be entered into with us in your name, and every promissory note, bill of exchange, draft, cheque, instrument, receipt, security agreement, mortgage, encumbrance, or charge receipt.
- except for a lawful claim made before repayment, the whole or any part of the credit balance in your account may be withdrawn by any one of you, or applied by us to the debts of any one or more of you to us.
- The instructions given by you remain in force and can be relied upon by us until we receive written notice of cancellation by any one or more of you.
- This Agreement, and any order or receipt signed or authorised by any one or more of you under this Agreement is binding on each of you and your own legal or personal representatives.

# General Terms and Conditions

## Applicable to All Business Accounts and Services

### 1. How We Will Protect Your Privacy

Your privacy is important to Scotiabank. This section of the Agreement sets out the information practices for the Scotiabank Group, including what type of information is collected, how the information is used, and with whom the information is shared.

Scotiabank is a global organization, with legal entities, business processes, management structures and technical systems that cross borders. Our privacy practices are designed to provide protection for your personal, business and financial information within the Scotiabank Group, all over the world.

When you apply for, or provide a guarantee in respect of, or use any Service or Business Accounts and while you are our customer, you agree that:

We may collect certain information from you and about you such as:

- the legal name and trading name, date of incorporation, address, type of business, and any other information which is required by law in many of the jurisdictions where Scotiabank does business;
- the full name, address, date and place of birth and occupation for signing officers, directors, officers and beneficial owners of a corporation, each partner in a partnership, intermediaries, trustees, executors and club members and other third parties, and any other information which is required by law;
- at least one piece of government-issued identification with a picture, such as a valid passport, national identification card, voter's card or driver's license for signing officers and beneficial owners to the Business Accounts, as well as other documents or means of confirming your identity that are acceptable to us;
- your annual income, assets and liabilities and credit history;
- information about your transactions, including payment history, account activity, how you intend to use the Business Account(s) or Services, and the source of any incoming funds or assets; and
- information we may need in order to provide you with a Business Account(s) or Service. In some instances, we may advise you that providing this information is optional.

We may collect from, and use and disclose this information to, any person or organization for the following purposes:

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- to confirm your identity;
  - to understand your needs;
  - to determine the suitability of our Services for you;
  - to determine your eligibility for our Services;
  - to set up, manage and offer Services that meet your needs;
  - to provide you with ongoing Services;
  - to meet our legal and regulatory requirements;
  - to manage and assess our risks;
  - to investigate and adjudicate insurance claims; and
  - to prevent or detect fraud or criminal activity or to manage and settle any actual or potential loss in connection with fraud or criminal activity.

We will use health information strictly for the provision of an insurance Service.

We may share your personal, business and financial information within the Scotiabank Group for the purposes set out above, and you agree that we may transfer it to countries in the world where we do business. This means that your information may be accessible to regulatory authorities in these countries in accordance with the laws of these jurisdictions.

We do not provide directly all the services related to your relationship with us. We may use third party service providers to process or handle information on our behalf and to assist us with various services such as printing, mail distribution, data processing, marketing, providing customer support or performing statistical analysis of our services, and you acknowledge that we may release information about you to them.

Our service providers are located all over the world. As a result, your information may be accessible to regulatory authorities in accordance with the law of the jurisdictions where our service providers operate. We will require our service providers to protect the information they receive from us in a manner that is consistent with Scotiabank Group information practices.

We may collect, use and disclose your tax or other government-issued identification for income tax reporting purposes, as required by law in many of the jurisdictions that Scotiabank does business. In addition, we may ask you for your tax or other government-issued identification information, where permitted by law, to verify and report credit information to credit bureaus and credit reporting agencies as well as to confirm your identity. This allows us to keep your personal information separate from that of other clients, particularly those with similar names, and helps maintain the integrity and accuracy of your information.

You agree to give us complete and truthful information. If any personal information changes or becomes inaccurate or out of date, you are required to advise us immediately so we can update our records.

You agree that this Service is being used solely for your benefit and for the benefit of those persons that are also signatories to it, as appropriate. If this is not so, you are required to advise us and provide us with the particulars of any third party that may benefit from the Service and their relationship with you.

We may verify relevant information you give us including in your personal capacity as directors, officers, signing officers or owners of the business, with your references or other reliable independent sources, and you authorize any person whom we contact in this regard to provide such information to us. We may refuse to enter into or continue relationships or conduct transactions with you for certain legal reasons, or if you insist on anonymity or provide false, inconsistent or conflicting information where the inconsistency or conflict cannot be resolved after reasonable inquiry.

We may monitor your Business Accounts and Services to meet our legal and regulatory obligations, including using automated surveillance systems to prevent or detect fraud or criminal activity such as money laundering or terrorist financing. You agree that we may share your information within the Scotiabank Group for these purposes, including monitoring account activity, investigating unusual or suspicious activity and, if necessary, reporting such activity to law enforcement agencies.

You agree that we may monitor or record any telephone call we have with you. The content of the call may also be retained. This is to establish a record of the information you provide, to ensure that your instructions are followed properly and to ensure that customer service levels are maintained.

When you apply for, accept, or guarantee a loan or credit facility or otherwise become indebted to us, and from time to time during the course of the loan or credit facility, we may use, give to, obtain, verify, share and exchange credit and other information about you with others including electronic payment service providers, credit or charge card associations, loyalty program partners, credit bureaus, credit reporting agencies, mortgage insurers, creditor insurers, registries, other companies in the Scotiabank Group and other persons with whom you may have financial dealings, as well as any other person as may be permitted or required by law. We may do this throughout the relationship we have with you, and we can continue to disclose your business information to credit bureaus and credit reporting agencies even after the loan or credit facility has been retired. You also authorise any person whom we contact in this regard to provide such information to us.

When you apply for, or sign an application in respect of or accept an insurance Service from us, we may use, give to, obtain, verify, share and exchange information about you with others including references you have provided, from hospitals and health practitioners, from government health insurance plans, from other insurers, from medical information and insurance service bureaus, from law enforcement representatives, from private investigators, and from other groups or companies where collection is necessary to underwrite or otherwise administer the Service

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requested, including the assessment of claims. You also authorise any person whom we contact in this regard to provide such information to us.

We may give information about you to other members of the Scotiabank Group so that these companies may tell you directly about their products and services (where the law allows this). The Scotiabank Group includes companies engaged in providing services to the public such as deposits, loans and other personal financial services; credit, charge, debit and payment card services; full-service and discount brokerage services; mortgage loans; trust and custodial services; insurance services; investment management and financial planning services; and mutual funds investment services. This consent will apply to any companies that become part of the Scotiabank Group in the future. You also agree that we may provide you with information from third parties we select.

If we sell a company in the Scotiabank Group or a portion of the business of a Scotiabank Group member, we may release the information we hold about you to the prospective purchaser. We will require any prospective purchaser to protect the information provided and to use it in a manner that is consistent with Scotiabank Group information practices.

We may keep and use information about you in our records in any form for as long as it is needed for the purposes described in this Agreement, even if you cease to be a customer. You agree that a copy of our permanent business record(s) (in any form, including microfilm, photocopy, CD-ROM or image) of any communication may be substituted for an original document. You agree that such records, or any recorded verbal communication, may be used as conclusive evidence of the content of that communication in any legal or other proceedings.

## **2. How We Can Contact Each Other**

We will use the address or any other contact details given in your Business Account Application to contact you. You agree to tell us of any changes or additions to these details. We may contact you by mail, telephone or e-mail. All statements and notices we have agreed to give you by mail will be sent to the address that you most recently have given to us, and will be deemed to have been received by you five business days after it has been mailed or at the time of personal delivery if we send an electronic communication. Correspondence from the Bank is forwarded in envelopes marked with our name and return address.

You may contact us at the address and other contact details we give you when you open your Business Account or Service. We will give you written notice if any of these change. If you contact us by telephone, we will take reasonable steps to verify your identity before providing any Business Account information.

You agree that we may leave a message for you to contact us on an answering machine or facsimile machine or with a person answering the telephone, and that we may use an automatic dialing system to give you recorded telephone messages.

Regarding the Scotia OnLine Internet Banking and Cash Management Services, you agree to contact us only through the Scotia OnLine Internet Banking website or by phone and not through any unsecure websites or other methods such as email. You also agree to receive communications regarding your account through the Scotia OnLine Internet Banking channel and you agree you will not attempt to circumvent receiving any messages. You are deemed to have received any electronic messages sent to you when they are delivered to you through the Scotia OnLine Internet Banking website.

### **3. How We Will Accept Instructions From You**

Any instructions to us may be given in person at your branch or delivered to your domicile branch in writing. We will accept instructions through the mail when they have been received by your domicile branch, but we are not responsible for any delays or failure of delivery of such instructions.

We may refuse to act upon any instructions, if in our opinion to do so may be illegal or in breach of any obligation we owe to a third party, or cause us to fail to comply with any code, guideline or standard in force from time to time as it applies to us; or if we are in doubt as to the authenticity or authority of the person giving such instructions. You will ensure that all your instructions to us meet our requirements with regard to form, signatures, verification and authorisation.

If you also wish to give instructions by telephone, facsimile or e-mail you agree to the following:

- that such instructions will be accepted only from signing officers;
- that the Bank or any of its subsidiaries or agents will not be liable to you or the business for acting on your instructions or on instructions which appear to be from you, if those actions are in good faith;
- that you indemnify and save harmless the Bank and any of its subsidiaries and their respective agents from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses, disbursements of any kind or nature whatsoever which may be imposed upon, incurred by, or served against them, by reason of their actions taken in accordance with the instructions;
- that service fees will apply for actions taken by the Bank in response to your instructions. These fees may be deducted from any account you have with the Bank, unless otherwise specified by you in your instructions;

You agree to maintain security systems, procedures and controls to prevent and detect:

- theft of funds;
- forged, fraudulent and unauthorised instructions and electronic transfer of funds;
- losses due to fraud or unauthorised access to a Service.

It is your responsibility to ensure:

- all cheques and instruments are numbered sequentially;

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- all cheques and instruments are secured in the same manner as large sums of cash;
  - all cheques and cheques or other instruments, bankcards, access terminals, cheque imprinters, stamps, seals and facsimile signature devices are kept in a secured locked safe, vault or other receptacle;
  - periodic reviews are carried out to ensure cheques and other instruments are secure;
  - periodic audits of cheques, instruments, bank cards, access terminals, Cheque imprinters, stamps, seals and facsimile signature devices are performed;
  - that the individual responsible for doing bank statement reconciliations is not the same individual who is responsible for the security of cheques or instruments or their preparation;
  - all employees and agents having any role in preparing cheques or instruments and the business' bank statement reconciliation or other banking functions are supervised and monitored; and
  - that procedures are in place to protect and regularly change passwords and update security measures that protect access to remote banking, online banking and telephone banking.

We and our officers, directors and employees and agents will not be liable to you or to any third party for any claims or losses you may suffer that result from any fraud caused by any of your employees or agents even if any of the above controls are not breached, even if you send us a notice within the thirty (30) day period advising us of such loss.

You are responsible for settling payment of your instructions. Unless you have made specific arrangements with us, you will ensure that your accounts have sufficient cleared funds to settle any instructions at the time that you give us an instruction. We are not required to settle an instruction, if sufficient cleared funds are not available in your account. The reported balances for your account may include amounts which are not cleared funds. Cleared funds mean cash or any funds from any deposit which have been finally settled through the clearing system.

We may process your payment instructions and any charges to your account in any order convenient to us. Where more than one instruction is presented for payment on your account, the order of processing may affect whether an instruction is honoured if there are insufficient cleared funds in the Business Account.

You acknowledge that we must clear instructions using a clearing system and are bound by the rules of any clearing system we use, including rules for endorsement of instructions, identity of payee and the time for final settlement. These rules affect our ability to honour your request to cancel instructions and the procedures we must follow to settle your instructions and clear funds for you. You acknowledge and agree that these rules shall in no way whatsoever operate or be construed to impair or limit any rights or remedies we have against you.

We reserve the right to clear and transfer instructions by whatever method we choose, whether they are drawn on your Business Account or negotiated by you.

You grant us sufficient time to settle all instructions. You acknowledge that we may, at our discretion, delay crediting your Business Account until we receive the cleared funds for the instruction.

If we cannot charge a payment, fee or expense to your Business Account, or if we ask you to, you must immediately pay us any amounts you are required to pay under this Agreement, plus interest at our published overdraft rate. Interest will be calculated on a daily basis and will be payable monthly or as we may otherwise require.

If an instruction on your Business Account requires settlement in a currency other than the currency of the Business Account, we may sell to you or purchase from you the amount of the other currency required to settle your instruction. The sale or purchase will be at our customer rate of exchange in effect at the time. Any costs for this exchange will be added to the sale amount payable by you or deducted from the purchase amount otherwise payable to you. We will charge the resulting total sale amount or credit the resulting net purchase amount to your Business Account.

#### **4. Our Payment Obligations To You**

The money we owe to you because of deposits to your Business Accounts with us is payable only at the domicile branch where you maintain the Business Accounts. You are not entitled to ask for payment at any other branch or subsidiary of Scotiabank.

While we may permit you to deposit and perform other banking transactions at another Scotiabank branches through designated Scotiabank ATMs, Automated Banking Services, or other automated payment systems, this privilege is subject to restrictions and we reserve the right to limit or remove such functionality of services at our sole discretion.

The Bank will not take any responsibility or be liable for any reduction in any Business Account due to taxes or depreciation in the value of the funds credited to the Business Account due to restrictions on transfer, payments or convertibility or due to requisitions, involuntary transfers, distress of any character, exercise of military or usurped power or any other cause beyond the control of the Bank. You will not have any claim, action or other recourse to the Bank or any of its branches, affiliates or subsidiaries other than the branch where the Business Account is domiciled.

#### **5. Your Payment Obligations To Us**

In return for our opening and keeping this Business Account(s), you agree to pay (and we can deduct) from this Business Account any monthly fee and additional service charges for the Business Account and Services.

You also agree that we can deduct from this Business Account:

- any debt or liability of any of you to us or to any of our subsidiaries together with any expenses incurred by us in connection therewith.

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- the amount credited to your Business Account or paid to you pursuant to any instruction, regardless of whether or not we have received settlement in respect of such instruction, if in our sole and absolute discretion of such instruction is in any way whatsoever related to a fraudulent item, an item with an endorsement error or an item for which we may incur a loss if the payment or credit thereof is not reversed, together with all related costs associated with such a charge to your Business Account.
  - if any of these deductions creates or increases an overdraft, you are still responsible for each charge, debit or liability until you pay us the amount owed in full. You promise to pay us immediately on request, the amount of any overdraft along with your overdraft charges currently due.

**Fees** - We can provide you with details of the monthly fees and service charges when you request them. We may vary at our discretion all charges payable by you. Changes to our fees and charges will be advised to you in advance, through notices in our branches, and may also be given through notices in our monthly statements, ATM screens or on our public websites.

## **6. Your Cheques May Be Returned**

You agree to complete your cheques so that they are not easy to alter and you must not put a date on your cheques which is after the date of signature. If you do, we will not be liable for any loss you incur as a result of us paying a cheque before the date you have put on it.

If we return cheques or regular payment orders or refuse to accept other instructions we will tell you the reason for doing so. Charges for returned items or items we are obliged to pay, such as guaranteed or certified cheques, are available on request.

We may refuse to make any payment if you do not have cleared funds (or an agreed overdraft) available on the working day before the item(s) is presented for payment. In deciding whether you have funds available we may take into account any earlier instructions to make payments, any authorisations we have given for ScotiaCard Banking Card transactions, regular payments from your Business Account, and any cheques we are treating as cleared. We will tell you if you can make payments from your Business Account against cheques which are not cleared. We may, at our discretion, not take into consideration regular credits paid into your Business Account or any credits received after the decision to refuse payment has been taken.

### **Check 21 Act**

U.S. federal law entitled the “Check 21 Act” allows U.S. banks to remove an original paper cheque from the cheque payment system, capture its image electronically and destroy the original item. As a result, if you negotiate a U.S. dollar cheque that is processed through the U.S. cheque payment system and it is subsequently returned, you might receive a paper reproduction of the electronic image, a “Substitute Check”,

instead of the original paper cheque. Under U.S. law, a Substitute Check is the legal equivalent of the original cheque, provided that it meets the conditions prescribed under the Check 21 Act.

### **Cheques You Deposit May be Returned**

The reasons a cheque you deposit may be returned by another financial institution may include, but are not limited to the following reasons:

- non-sufficient funds (NSF) or refer to drawer: There is not enough money in the account on which the cheque is drawn.
- payment stopped: The owner of the account has requested the cheque not be paid.
- postdated: The date on the cheque is in the future from the date it was negotiated.
- stale dated: The date on the cheque is 6 months or older.
- account closed: The account on which the cheque is drawn is closed.
- funds not cleared: A “hold” has been placed on funds in the account on which the cheque is drawn.
- materially altered cheque: The owner of the account says the cheque has been altered without authorisation.
- counterfeit cheque: The owner of the account denies issuing the cheque.
- irregular signature: The signature on the face of the cheque does not match the usual signature of the person that it purports to be.
- forged signature: The signature on the face of the cheque is not the signature of the person that it purports to be.
- forged endorsement: The signature of the endorser of the cheque is not the signature of the person that it purports to be.
- words and figures differ: The written and numerical amounts on the cheque do not match.

If you deposit a cheque that was drawn in a foreign currency and the cheque is returned to us, you will be responsible to repay to us the local currency equivalent of that cheque at the time that it is returned to us.

You may stop payment of a cheque you have issued only if it has not been presented for payment (unless it has been certified or guaranteed in which case you may not stop payment). Once we have received an instruction to pay, you do not have the right to reverse, change, stop or cancel it unless we give our consent. We will not give such consent if we have already acted on the instruction.

When you cancel an instruction (which includes a stop payment), you must follow the procedures set out in any service materials and complete any form which we give you. You must also communicate the cancellation to us in writing or by fax or through Scotia OnLine Internet Banking (if permitted) before final settlement. You acknowledge we

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must follow any applicable rules of clearing system or electronic funds transfer systems and this may affect our ability to cancel an instruction.

If you cancel an instruction, we will not be obliged to hold the funds or return the funds to you unless:

- we are able to have the instruction stopped and the cleared funds are returned to us, and
- the service materials specify a procedure for you to cancel instructions and you correctly followed that procedure.

If any cheque you have negotiated is returned to us unpaid we will debit your account, whether or not it creates or increases an overdraft and even if we have already allowed you to make a payment or to take cash against such cheque.

## **7. How to Request a Service**

In addition to submitting a Business Account Application to open a Business Account, to subscribe for Cash Management Services or Scotiabank Merchant Services, you must:

- submit a Service Request & Pricing Schedule in advance for each of these services you wish to receive or change under this Agreement;
- for Scotiabank Merchant Services, promptly and additionally provide any information required in Section A of the Business Account Application, or other specialized services forms that we provide to you (i.e. Internet Merchant questionnaire);
- for Trade-Import/Export Products, complete Section B of the Business Account Application and any accompanying product application that we provide to you; and
- change the temporary Electronic Signature that we provide to you, to your own Electronic Signature.

You agree to make your own arrangements to provide the equipment and software you need to meet your desired levels of service, security and reliability. Equipment includes computer systems and telecommunication devices. All equipment and software must meet our requirements and specifications for the service we are providing. All purchase, installation and maintenance costs will be at your expense. You will pay for any charges for shipping, transporting or delivering any material to you.

We may, if we choose to specify security procedures for a Service, which you must follow.

You agree to keep any keys, Electronic Signatures, security devices and verification procedures safe and confidential, and change them at least as often as the Service materials specify. We may establish a routine to verify the source and authenticity of instructions you give us and may verify an instruction before acting on it. We may act on instructions that contain the verification routine without checking authority.

For all Service materials, including software we give you, you agree:

- we and any lessor or licensor will retain all ownership rights, including any copyright and patents;
- you will not disassemble or reverse-engineer the software;
- you will not copy, remove, modify, transfer, adapt or translate the Service materials without our consent;
- when we stop providing a Service you will delete the applicable software from your computer hardware; and
- we may, but are not required to, confirm or obtain endorsements if we choose to do so. If a service we provide involves accepting and processing unendorsed third party cheques, we may do so. You will reimburse us for any amount we cannot collect as a result of a problem in clearing an unendorsed third party cheque.

If electronic communication is part of a Service for a Business Account, you authorise us to accept electronic files and instructions as described in the service request.

### **8. We May Use Agents and Transmission Services**

We may use any correspondent or third party to act as your agent for funds transfers or other transactions involving your Business Account(s). This correspondent or third party, while processing your funds will be considered your agent and not an agent of the Bank.

We are not liable for any act or omission of any correspondent third party or for any loss, destruction or delay in your fund transfer that is beyond our control. We are not responsible for any increase or reduction in the value of your Business Account due to changes in foreign currency exchange rates or for the unavailability of funds due to foreign currency restrictions during that funds transfer.

You must promptly review any notice sent to you regarding a funds transfer transaction involving your Business Account, and notify us within 24 hours of when you received or were deemed to have received notice, of any error or omission in the transaction. If you fail to promptly report such an error or omission you relieve the Bank of any liability with respect to such discrepancies or objections.

### **9. You Must Verify Your Accounts**

We will periodically provide you with statements of your Business Accounts either in printed form or through Scotia OnLine Internet Banking.

You must review each statement carefully to check and verify the entries. If you believe there are any errors or omissions, you must tell us in writing within thirty (30) days from the date we mailed the statement or made it available for pickup electronically or in person. If you do not tell us of any errors or omissions within those thirty (30) days, you have acknowledged that:

- the balance shown in your statement is correct;
- all amounts charged to your Business Account are valid;

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- there are no transactions omitted from your statement, (i.e. that the statement is correct and complete); and
  - the use of any Service shown is correct.

We and any of our officers, directors, employees and agents will not be liable to you or to any third party for any claims or losses you may suffer that result from any fraud caused by any of your employees or agents even if you send us a notice within the 30 day period advising us of such loss. After thirty (30) days, you cannot claim, for any purpose, that any cheque, instrument or entry (debit or credit) on your statement is incorrect, and you will have no claim against us for reimbursement relating to a cheque, instrument or entry, even if the cheque, instrument or instruction charged to your Business Account was forged, unauthorised or fraudulent.

We will tell you in the Service materials or by way of a notice if the nature of any Service requires more frequent statements, exchange of information, reports or verification than described generally for the Business Account. The account verification conditions described above will apply regardless of the reporting frequency, but the Business Account verification period will be the one described in the Service materials or notice and not the thirty (30) day verification period as above.

We will mail your statements of account to your latest address on our records or make them available for pick-up at the branch or electronically, as may be agreed in writing from time to time. If you do not receive a statement, or pick it up as you have agreed to do, within ten (10) days after the end of the statement period, you must let us know within fifteen (15) days after the end of the statement period. If you do not let us know you did not receive the statement of Business Account within that time, then you will be deemed to have received the statement five (5) days after the mailing date, and you have a further thirty (30) days to review the statement and advise us of any error.

If you agree to receive statements of accounts only through Scotia OnLine® Internet Banking, only you are deemed to have received the statement of accounts 24 hours after it is posted to Scotia OnLine Internet Banking.

## **10. Limitation of Liability and Indemnity**

We and our officers, directors, employees and agents are not liable for any loss or damage you suffer in connection with your Business Accounts or the provision of any product or Service, or refusal to provide any Service, except if it was caused by our gross negligence. You acknowledge that this means that we are not liable for the following specific matters:

- honouring, or refusing to honour or cancel, a Cheque or an instruction for any reason;
- any delay in completing or failing to provide a Service for any reason even if this means you are unable to access funds in your Business Account;
- any matter arising from your actions or your failure to perform your obligations properly under this Agreement even if you are not at fault; and

- a forged, unauthorised or fraudulent use of Services, a Cheque or instruction, or material alteration to a Cheque or an instruction, even if you or we did or did not verify the signature, Cheque or instruction or authorisation.

If we are found to be liable for failing to perform a Service properly, our liability will not be more than the direct cost to you of any loss of funds you suffered. This loss will be calculated from the time we should have made the funds available to you until the time we did make them available, or until you should reasonably have discovered their loss, whichever is earlier.

Under no circumstances will we or any of our officers, directors, employees or agents be liable for any indirect or consequential damage or damages that are a consequence of a loss, including, without limitation, loss of profits.

You agree to:

- release us and our officers, directors, employees and agents from any or all liability;
- indemnify and hold us and our officers, directors, employees and agents blameless; and
- compensate both us and any third party providing services or settling instructions on your behalf for any loss, damage, payment, legal expense (based on the solicitor's fees charged to us) and other costs, as may be applicable, resulting from:
  - any Service performed or refused;
  - any check or instruction honoured, processed, negotiated, settled, changed, cancelled, reversed or refused; or,
  - your failure to properly provide information or follow any procedures for a Business Account or Service under this Agreement.

We will let you know if a claim arises for which you have agreed to indemnify us. We will each cooperate in dealing with the claim, but any costs will be at your expense.

You may defend a claim before making a payment to settle it as long as we are satisfied this will not cause us to be exposed to further loss.

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# Cash Management Services Agreement

If you are approved for Cash Management Services, we shall provide you with:

- a reasonable number of copies of the Quick Reference Guide and we shall instruct a reasonable number of your personnel in the use of the applicable Services. You will comply with the procedures and instructions in the Quick Reference Guide or otherwise issued by the Bank from time to time; and
- a ScotiaCard Banking Card number, user ID(s) and password(s) to enable you to obtain the Service(s), and we will instruct you on how to change the password(s).

You agree to make your own arrangements to obtain, install and maintain all at your own expense, the equipment, including systems and telecommunications devices and software required in order to operate the Services that you consider necessary to meet your desired levels of service, security and reliability and which meet the operating capabilities and specifications that we establish from time to time.

Before using a Service, you must change the password(s) we provide to you and create new password(s). You will be responsible for implementing all necessary procedures and guidelines for maintaining the confidentiality of such new passwords to ensure that only individuals authorized by you have access to the Services and to such password(s). You acknowledge that we are not responsible for the unauthorized use of any service.

You agree and you authorise the Bank to provide to any company that you have so designated in the Cash Management Service Request & Pricing Schedule, with access through computer terminals to your Business Account(s) and banking information and you authorise these companies to give instructions to the Bank, including giving orders for the transfer of funds from your Business Account(s).

You will appoint and delegate at least two Company System Administrators (the “CSAs”) and provide the relevant information in the Service Request & Pricing Schedule. If you choose to appoint only one CSA, you must acknowledge this on the Service Request & Pricing Schedule. The CSA shall delegate from time to time the person(s) authorised to conduct your banking business and to give orders for the transfer or payment of the Customer’s funds and for the accessing of information concerning your Business Account and other accounts through computer terminals (the “Authorised Users”). You assume full responsibility for maintaining the confidentiality of Electronic Signatures and ensuring that knowledge of such Electronic Signatures is limited to your Authorised Users.

You agree that for any transactions initiated either by you or by any company you have designated (“Customer Initiated Transactions”), the records of the Bank shall, in the

absence of manifest error, be conclusive and binding on you. We and any of our officers, directors, employees and agents will not be liable for any delay or failure to effect a Customer Initiated Transaction by reason of any causes beyond our reasonable control, or for any errors in transmission or disclosure of any financial or confidential information, except errors or disclosures caused by our gross negligence.

You agree to pay all applicable Service fees and charges promptly when due, as set out in the Service Request & Pricing Schedule(s). You also agree to pay all applicable taxes and duties on the Services we provide to you. We may change any of our Service fees or charges.

If we do, we will give you notice at least ten (10) days before they go into effect, either through a written or electronic notice or by posting a notice in our branches or on our website. You acknowledge that a Base monthly fee is payable for each Service you have requested as provided in the Service Request & Pricing Schedule(s) whether or not you make use of that Service. Any unused transactions may not be carried forward for future use.

If you are approved for Wire Payment Services, Bill Payment Services and/or the Account Transfer Service, you agree that in addition to your obligations elsewhere in this Agreement, to:

- provide the information required in the Service Request & Pricing Schedule to ensure we can perform these Wire Payment Services, Bill Payment Services and/or the Account Transfer Service for you; and
- confirm the set-up of the instructions pursuant to the Service Request & Pricing Schedule with us before using the Service.

If you are approved for electronic debit and/or credit Service known as Batch Payment Services and Batch Collection Services, you agree, in addition to your obligations elsewhere in this Agreement, to:

- provide the information required in the Service Request & Pricing Schedule to ensure the Bank can perform these Batch Payment Service and Batch Collection Services for you;
- provide us with the funds required to make any payments under these Services, in a form that is satisfactory to us, on the day on which the payments are to be made available to payees or on such other day as the Bank may notify you in writing;
- use your best efforts to respond promptly to any enquiries by persons who are expecting to receive or make payments under this Service by us and to resolve any difficulties experienced by other parties or by the payees or intended payees of such payments that you have ordered; and

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- designate a person authorised by you to assist us in resolving any outstanding issues and to inform us in writing if there is a change in the designated person.

If you are approved for Cheque Reconciliation Services, you agree, in addition to your obligations elsewhere in this Agreement, to:

- provide the information required in the Service Request & Pricing Schedule to ensure we can perform the Cheque Reconciliation service for you;
- ensure your cheques are serially MICR encoded and tested to ensure they conform to our standards and requirements; and
- inform us (through your domicile branch) in writing of any changes you are requesting to this Service, which may be done after a reasonable time is given to update the Cheque Reconciliation Service.

If you are approved for the Cash Consolidated Plan Service you agree, in addition to your obligations elsewhere in this Agreement, to:

- provide the information required in the Service Request & Pricing Schedule to ensure we can perform this Cash Consolidated Plan Service for you;
- designate a Business Account to serve as the concentration account at a concentration branch for this Service that will be credited with deposits made at other Scotiabank branches. Reports produced by the Bank in performing the Service will be available to you at the concentration Branch or online through Scotia OnLine Internet Banking.

# ScotiaCard Agreement

This ScotiaCard Agreement (“ScotiaCard Agreement”) sets out the terms under which you may use your ScotiaCard Banking Card. It replaces all previous ScotiaCard agreements and applies to a new, a renewal or a replacement ScotiaCard Banking Card.

## Using Your ScotiaCard Banking Card

Upon request, we will issue you a ScotiaCard Banking Card in the name of your business. When you receive the ScotiaCard Banking Card from us, you agree to the terms and conditions described in this Agreement.

You can deposit funds to your account through a Teller-assisted transaction at another Scotiabank branch within your jurisdiction or through designated Automated Banking Services or through ABB access by presenting your ScotiaCard Banking Card, together with your Scotiabank cheque, or such other identification, that we reasonably require at any Scotiabank branch within your jurisdiction.

This ScotiaCard Banking Card does not give access to withdraw funds from any Scotiabank branch or ATM, nor does it allow POS debit.

Inactive Accounts cannot be accessed through any Automated Banking Services or through the ABB service.

## Transaction Charges And Fees

You agree to pay and we may deduct, without notice, from any of your Business Accounts (even if this creates or increases an overdraft), the following (where applicable):

- (i) a transaction charge or service fee, at the prevailing rate (as determined by us from time to time) for each transaction for which the ScotiaCard Banking Card has been used via the Automated Banking Services listed above, or other designated automatic terminals. A notice of the charges and fees is available in our branches upon request.

You acknowledge that the Automated Banking Services charges/fees for each transaction performed are in addition to any account level Service charges which apply to your Business Accounts.

## Transaction Limits

We may establish and change limits, dollar or otherwise, from time to time, on the various transactions which may be available, without prior notice to you. Cumulative limits (e.g. daily, weekly or per transaction) vary from country to country and notice of such limits is available in our branches upon request.

## Transaction Records/Confirmation Numbers

Our records as to whether an Automated Banking Service has been performed, and

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our determination of the details of that transaction, will be considered correct and binding on you, unless you provide us with evidence to the contrary within thirty (30) days of the date of a disputed transaction.

### **Posting Of Transactions**

Any Automated Banking Service transaction conducted before 7:00 pm (in the country where your Business Account is domiciled); Monday through Friday will normally be posted to your applicable Business Account as of the date of the transaction, unless that day is a holiday. Transactions conducted on Saturdays, Sundays or holidays will normally be posted to your applicable account as of the next business day.

Where available, any automated bill payment request made on or before 7:00 pm, Monday through Friday, will be posted to any of your designated Business Accounts on the day of the transaction. An automated bill payment made after 7:00 pm, Monday through Friday or anytime on Saturday, Sunday or a holiday will be posted to your designated Business Account on the next business day.

Where available, any automated bill payment request will be deemed to have been received by us on the date the transaction is posted to your Business Account. We are not responsible for any of the processing or posting procedures of your designated Bill Payment Companies. Transactions for Business Accounts with insufficient funds at the time of posting will be declined. The debits to your Business Account for post-dated bill payments and funds transfers are processed by 7:00 pm on the date to which your payment is post-dated.

### **Limitation Of Liability**

We and any of our officers, directors, employees and agents are not liable to you for any delay, loss, damage or inconvenience which results from providing, or failing to provide any Service, except where such losses result from technical problems, bank errors and other system malfunctions for which we are solely responsible. Also, we and any of our officers, directors, employees and agents are not responsible for your acts or omissions, or those of any third party. Furthermore, we and any of our officers, directors, employees and agents shall in no way be liable for any accident, act of aggression, theft, loss or damage you may suffer while using Automated Banking Services, whether you are on Bank or other premises.

We are not responsible for any losses or delays in transmission of instructions arising out of the use of any access service provider or caused by any third-party software.

We are not responsible if you give us incorrect instructions, or for any errors that result from your having incorrectly provided to or selected from us, any Business Account number, dollar amount or other information required for the operation of the Automated Banking Services.

Neither the Bank, nor any other information provider, makes any express or implied warranties concerning the Scotia OnLine Internet Banking Services or browsers including, but not limited to, any warranties of merchantability, fitness for a particular purpose or non-infringement of third party proprietary rights unless disclaiming such warranties is prohibited by law.

### **Lost, Stolen, Authorized Or Unauthorized Use Of The ScotiaCard Banking Card**

You will notify us immediately, by telephone and in writing, of the loss, theft or any unauthorised use of the ScotiaCard Banking Card or Electronic Signature. Your liability will cease only when we receive notice of such loss, theft or unauthorised use.

You are responsible for the care and safety of the ScotiaCard Banking Card and your Electronic Signature. You will keep your Electronic Signature confidential and secure from all persons without exception, and apart from the ScotiaCard Banking Card at all times.

You must not disclose any other security codes, such as passwords, PINs, access codes and Business Account numbers that may be used or required for Automated Banking Services, the ABB Deposit Only Service or any other Service transactions. You are liable for all ScotiaCard Banking Card transactions incurred using your Electronic Signature.

### **Limitations For Authorised And Unauthorised Use Of The ScotiaCard Banking Card**

You are liable for all debts, withdrawals and Business Account activity resulting from:

- authorised use of the ScotiaCard Banking Card by persons to whom you have made your ScotiaCard Banking Card and/or Electronic Signature available or who received possession of the ScotiaCard Banking Card and/or Electronic Signature with your consent; or
- unauthorised use of the ScotiaCard Banking Card and/or Electronic Signature, where you have made available for use the ScotiaCard Banking Card and Electronic Signature by keeping them together or in such a manner as to make them available for use, until we have received notice of loss, theft or unauthorised use; Or
- Any failure to comply with the terms of this Agreement.

You will not be liable for losses in circumstances beyond your control. Such circumstances include:

- technical problems and other system malfunctions;
- unauthorised use of a ScotiaCard Banking Card and PIN
- after the ScotiaCard Banking Card has been reported to us as lost or stolen;
- if the ScotiaCard Banking Card is cancelled or expired or you have reported that your Electronic Signature, including PIN, is known to another person;

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- where you have been a victim of force or intimidation, provided you have not contributed to the loss; or
  - due to fraud or negligence caused by us.

You will be considered as contributing to the unauthorised use of the ScotiaCard Banking Card and/or Electronic Signature and will be fully liable for all debts, withdrawals and Business Account activity where:

- the Electronic Signature you have selected is the same as or similar to an obvious number combination such as date of birth, bank account numbers, telephone numbers, license plate, address or other easy to guess combinations;
- you write your Electronic Signature down or keep a poorly disguised written record of your Electronic Signature, such that it is available for use with your ScotiaCard Banking Card; or
- you otherwise reveal your Electronic Signature, resulting in the subsequent unauthorised use of your ScotiaCard Banking Card and Electronic Signature together.

Until such time as you notify us of the loss, theft or unauthorised use of the ScotiaCard Banking Card and Electronic Signature, you will be liable for all withdrawals or other transactions on your accounts up to the maximum daily and weekly permitted withdrawal amounts through ABMs.

### **ScotiaCard Banking Card Customer Service**

Depending on the decals reflected on the back of your Card, the Card may be used to access Services where one of these symbols is displayed:



# Scotiabank Merchant Services Agreement

## **Special Definitions applicable to the Scotiabank Merchant Services Agreement**

**Acquirer** means a licensed member of a card association which maintains merchant relationships, and receives all bankcard transactions from the merchant and initiates data into the interchange system.

**Addenda** mean the Scotiabank Merchant Services Agreement Addenda which includes the Advance Lodging Deposit Service Addendum, the Card Rental Addendum, the Hotel Reservation Service Addendum, the Internet Merchant Program Addendum, the Recurring Payments Addendum and the Paper Merchant Addendum

**Adjustment** means a transaction that is initiated by us to correct a Transaction that has been processed to or from your Business Account.

**An unexpired Cardholder** means the person in whose name a Card is maintained and who is presenting the Card for payment.

**Association** means a credit card association such as Visa International, MasterCard International Incorporated or other organization, which services and obtains processing services formembers and functions as a principal/proprietarymember.

**Authorisation** means the act of verifying that the Cardholder has adequate funds available against his or her Credit Card limit for the amount of the Transaction requested. A positive authorisation results in an authorisation code being generated, and those funds being set aside for the benefit of the Merchant. The cardholder's available Credit Card limit is reduced by the authorised amount.

**Authorisation Centre** means a data service centre which provides information as to whether or not a Transaction is authorised.

**Automated Authorisation** means the Scotiabank automated services that allow you to electronically obtain authorisations for transactions.

**Bankcard** means a financial transactioncard (credit or debit card) that issued by a financial institution which enables the person to access their accounts.

**Card Processing Services** means the services necessary to authorise, process and settle Transactions, completed and effected by Merchants with Cardholders. In the case of such transactions, Merchants will accept payment through the use of the relevant Cards for goods, services or other items of value sold, leased, or otherwise provided to the applicable Cardholders, and such term shall also include the provision of related equipment and services that are necessary or ancillary to the provision of these services.

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**Cardholder** means the person whose name is embossed on a Credit Card and is a designated user on the Credit Card Account. In the case of a Debit Card, Cardholder means the owner of the Business Account to which the Debit Card has been assigned.

**Cardholder Permission Form** means the Scotiabank approved form used by Merchants and provided to Cardholders to obtain the Cardholder's permission to charge Recurring Services and Recurring Payments to the Cardholder's Card.

**Card Recovery Bulletin** is a publication by us listing Card account numbers that we want you, the Merchant to recover if such Card(s) is presented to you.

**Chargeback** means any item or transaction that is returned by a Card issuer or a Cardholder through the Association, whereby we would debit the Merchant's Settlement Account with the amount of the Chargeback if it cannot be successfully defended.

**Chip Cards** means the plastic payment cards embedded with a micro computer chip which store encrypted confidential information such as the Cardholder's account number and Personal Identification Number (PIN).

**Code 10** means the code that is used when a Merchant suspects fraud (i.e. a person using a Credit Card for a purchase is not the authorised Cardholder or the signature does not match etc.)and whereby the Merchant calls the Authorisation Centre immediately and states to the Authorisation Centre clerk "This is a code 10" and awaits instructions. If the Merchant is advised to obtain or hold on to a Card or is given other instructions, the Merchant shall use its best efforts, by reasonable and peaceful means, to comply with such advice or instructions.

**Credit Card** means a card whose holder has been granted a revolving credit line by his or her issuing financial institutions. The credit card enables the holder of the card to make purchases and/or take cash advances up to a prearranged credit limit.

**Credit Voucher** means a document or an electronic record submitted to the Bank by a Merchant evidencing any refund, credit or price adjustment to be credited to a Cardholder's account.

**Customer** means the Cardholder performing Transactions.

**Debit Card** means a card that is issued by a financial institution which allows a person to access funds in their account maintained with the financial institution without having to physically go to the branch of account. A debit card can be used to withdraw cash from an automated teller machine (ATM) and make purchases at Merchant locations.

**Downtime Floor Limit** means the maximum dollar amount of Credit Card sale that the Merchant may complete without having to obtain the Bank's Authorization. If the Scotiabank Merchant Service is unavailable, we may vary the Downtime Floor Limit from time to time by giving you written notice of the change.

**Electronic Draft Capture** (“EDC”) means a service that captures Transaction data that has been authorised through a Debit Point of Sale (POS) device. The amount of the Transaction will be credited to the Merchant’s Settlement Account identified in the ScotiaCard Point Merchant Services – Service Request & Pricing Schedule.

**Electronic Service** means any system or software application which we authorise for use in connection with the processing of Internet Service Transactions or Recurring Payments.

**Escrow** means money, securities or other property that are held by a third party until the terms and conditions of a contract are met.

**Floor Limit** means the maximum dollar amount that we establish for Card Sales, which the Merchant may complete without obtaining our verbal Authorization.

**Interchange** means the electronic transmission system of Visa, MasterCard, American Express or Discover Cards for the exchange of debit and credit Transaction data.

**Internet Transaction** means a transaction resulting from the use of the Internet or that is intended to result in an Internet Sale and/or Refund.

**Local Debit Network** means an electronic local network that is predominantly owned and operated by participating financial institutions for the processing of Debit Card transactions.

**Merchant** is the person or entity with which the Bank has contracted with and has agreed to provide the collection of payments by Debit or Credit Card for products and services by your Customers from the Card issuer.

**Merchant Number** means the number that is assigned to each Merchant by the merchant processor for accounting and billing purposes.

**Merchant Transaction(s)** means Cardholder transaction(s) that result in the use of a Debit or Credit Card and that is represented by a Sales Draft, or any adjustment or return that is credited to a Card which is represented by a Credit Voucher.

**On-Line Link** means the collection and processing of Transaction information via the Internet, dial-up, or a dedicated Merchant connection to the card processing system.

**Participating Institutions or Participants** means the various financial institutions participating in the Local Debit Network for point-of-sale devices.

**Payment Card Industry (PCI) Security Standards** means the standards established by the PCI Security Standards Council that deal with the ongoing development, enhancement, storage, dissemination and implementation of security standards for account data protection.

**Personal Identification Number (PIN)** means a confidential code of digits known by the Cardholder and the card issuing financial institution, used to authenticate the Cardholder’s identity and to authorize a point-of-sale Transaction.

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**Point of Sale Device (POS Device)** means the electronic equipment that the Merchant uses to perform transactions and that reads the magnetic stripe or data stored in the chip on the cards.

**Presentation of a Card** means the provision of a Card number on a Cardholder Permission Form for use in connection with a Recurring Payment.

**Recurring Payment** means an arrangement in which a Cardholder has pre-authorized a Merchant to charge on an ongoing basis (or until cancelled) an amount against their Credit Card or Debit Card account. The recurring payment arrangement may be for a defined time period or may stay in force until one or both parties decide to terminate it.

**Recurring Services** means all goods and/or services of an ongoing nature provided to a Cardholder in respect of which the Merchant has completed a Recurring Payment to bill the Cardholder for these goods and/or services.

**Refund/Returns** mean the process of reversing a previously settled transaction. This will appear as a credit on the Cardholder's Credit Card or Debit Card statement.

**Sale(s)** means the selling, leasing, or renting of goods or services by the Merchant to the Cardholder.

**Sales Draft** means the instrument or electronic record arising from the use of a Card which evidences an obligation on the part of the Cardholder to pay the amount specified in the instrument or electronic record to the Card issuer (in the case of a credit card transaction) or the Merchant (as applicable).

**Settlement Account** means the Business Account you have established, maintained and/or designated as the account for the purposes of processing payments or debits as part of the Scotiabank Merchant Services Agreement.

**Standard (Paper) Merchant Service** means the service that is offered by us where the Merchant obtains an Authorisation verbally from the Authorisation Centre for all Transactions that are above the Merchant's specified Floor Limit. Paper Sales Drafts are prepared manually by the Merchant, signed by the customer, and deposited in the Merchant's Settlement Account.

**Transaction(s)** means any sale that is paid for with a Card, represented by a Sales Draft, or any adjustment or return that is credited to a Debit or Credit Card, represented by a Credit Voucher.

### **General Terms**

The Merchant will honour any valid Card bearing authorised network marks, that the Merchant has set out to accept as outlined in the Scotiabank Merchant Services – Service Request & Pricing Schedule.

You agree that your advertising materials must contain clear and conspicuous notice of your cancellation policy and procedures.

If the electronic authorisation component of the Scotiabank Merchant Services is unavailable, the Merchant agrees to obtain a verbal Authorisation from the Bank for each Transaction that exceeds the Merchant's current Downtime Floor Limit. The Merchant also agrees to obtain the Bank's verbal Authorisation in accordance with the procedures that the Bank establishes from time to time.

The Merchant must complete all Sales Drafts to include either a physical imprint of the Cardholder's Card, or an electronic printing resulting from the utilization of a magnetic stripe reader and/or chip consisting of the name of the Cardholder, the Cardholder's account number, the expiration date of the Card, and any embossed initial date of validity, the signature of the Cardholder as it appears on the Card (not required for quick payment services), the name, address and unit number of the Merchant, the Transaction date, the description of the product sold or service rendered, the amount, and the Authorisation number, as required.

The Merchant must compare the signature on the Sales Draft or Credit Voucher with the signature of the Cardholder as it appears on the appropriate space on the Card.

The Merchant must not process a credit Transaction in order to provide a refund on a Debit Card Transaction.

The Merchant shall not execute a Transaction to replace funds unable to be collected from another payment method, such as to cover a returned cheque.

The Merchant agrees to indemnify the Bank against any and all fines, levies and assessments levied against the Bank by the Local Debit Network as a result of the Merchant's failure to comply with the Local Debit Network rules.

The Merchant agrees to sell merchandise to or perform services for the Customer at prices that do not exceed your ticketed or posted prices for such merchandise or services.

The Merchant agrees not to discriminate against a Transaction in favour of a Sale completed with cash, cheque, or other form of payment.

The Merchant shall not require any Cardholder to pay any part of the Bank's fee charged to the Merchant.

The Merchant shall not require a minimum or maximum Transaction amount and shall not post signs requiring a minimum or maximum Transaction amount in order to accept a Card.

The Merchant shall not refuse a Card Sale because a Cardholder refuses to provide supplementary information (i.e., address, telephone number) or identification (i.e., drivers license, other credit cards, etc.) when a valid Card is presented.

The Merchant shall not, with regard to the exchange, return or adjustment of any goods or services, discriminate against any Cardholder.

The Merchant shall not engage in acceptance practices (cash or otherwise) or procedures that discourage the use of Cards in favour of any other payment method that the Merchant also accepts.

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The Merchant shall not effect a Card Transaction when only a part of the amount due is included on a single Sales Draft, except when the balance of the amount due concurrently is paid by the Cardholder in cash or by cheque, or both.

The Merchant must not disclose or use the data which is visible or not visible on a Card, including, without limitation, information which is encoded on a Card's magnetic strip or chip, for purposes other than completing a legitimate Transaction.

The Merchant shall not disclose Transaction-related information to any party other than your agent, the Local Debit Network, your financial institution, or the Card issuing institution and then only for the purpose of the settlement of Transactions or error resolution.

The Merchant may not submit for payment Transactions between the Cardholder and any business other than your business. If you attempt to do so, you may be subject to a Chargeback and immediate termination of your Agreement and/or legal action.

Except for Sales Drafts that the Bank refuses to credit or chargeback to the Merchant's Account, the Merchant shall not receive payment from any party except the Bank for a Transaction evidenced by a Sales Draft.

The Merchant shall not process for payment any Transaction(s) representing the refinancing of an existing obligation or debt of a Cardholder including, but not limited to, obligations or debts:

- previously owed to the Merchant;
- arising from the dishonour of a Cardholder's cheque; and/or
- representing the collection of any other pre-existing indebtedness.

The Merchant shall not present for processing:

- any Transaction that did not originate as a result of an act between the Cardholder and such Merchant; and
- any Transaction representing payment for a product or service other than a product or service identified on the Scotiabank Merchant Services Application Form.

The Merchant shall not receive any payments from a Cardholder with respect to charges for goods or services which are included on a Sales Draft resulting from the use of a Card.

The Merchant may establish its own policy concerning refunds and the Merchant will give the Cardholder proper disclosure of this policy at the time of any Card Transactions. Such disclosure must be made on each Sales Draft, Transaction record, or suitable receipt provided to a Cardholder and must be in close proximity to the space provided for the Cardholder's signature. If with respect to any Card Transaction any merchandise is accepted for return, any services terminated or cancelled, or any price adjustment is allowed, the Merchant shall not make any cash refund to the Cardholder but shall deliver promptly to the Bank a Credit Voucher evidencing such

refund or adjustment. The Merchant shall deliver to the Cardholder a true copy of each applicable Credit Voucher or suitable receipt therefore completed so as to show the date of Transaction and the amount of the credit granted.

The Merchant shall deliver to the Cardholder a true and complete copy of the Sales Draft(s), or Transaction record(s), or suitable receipt evidencing a Transaction involving the use of a Card. Such copy shall be delivered at the time the Sales Draft, Transaction record, or suitable receipt is executed by the Cardholder, or promptly after the delivery of the goods or performance of the services covered thereby, whichever is earlier.

### ***Terms of Operation***

The Merchant agrees that the Bank's records as to whether a Transaction has been performed, and our account or determination of the details of Card Transactions will be correct and binding on the Merchant in the absence of contrary evidence that is satisfactory to the Bank.

The Merchant must issue a receipt to the Cardholder upon successful completion of a Transaction. The Cardholder's account number will be masked so that only the last 4 digits will appear on the receipt. The masked digits will appear as non-numeric characters such as asterisks. This is referred to as PAN truncation. The receipt must include the terminal ID, Transaction date and time, Authorisation number, Transaction amount and Merchant's name and address.

If the Merchant subscribes to the Scotiabank Merchant Service (EDC only), you agree to process the Transaction through your POS Device, in accordance with the procedures established by the Bank. If the Scotiabank Merchant Service is unavailable, you agree to follow the manual procedures.

If the Merchant subscribes to the Automated Authorisation or Standard (Paper) Merchant Service, and if the service is not available, you agree to imprint the embossed data from the Card and your Merchant plate on the Sales Draft or Credit Voucher with the Authorisation code.

On manually imprinted Transaction Receipts, a Merchant must include the Cardholder name if one is printed or embossed on the Card, and if the imprinted information is not legible, reproduce it clearly.

If the Merchant subscribes to either EDC or Automated Authorisation Service, the Merchant agrees to verify that the embossed Card account number is displayed on the POS Device or the POS Device printer after swiping the Card's magnetic stripe (if this function is provided by the POS Device). If these numbers do not match, you must call the Authorisation Centre for a Code 10 Authorisation.

The Merchant agrees to retain the "Merchant copy" of each completed Sales Draft and Credit Voucher and any other records relating to the Transaction for a minimum of 18 months from the date of the Transaction (or longer where required by law). The Merchant agrees that under no circumstances will the amount of a single Transaction above the

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assigned Floor Limit be split into multiple Transactions with separate Sales Drafts that would fall below your Floor Limit in order to avoid obtaining an Authorisation.

A Merchant may generate a Transaction receipt either electronically or manually with a brief description of the goods or services sold and currency symbol (such as US \$) or words denoting the Transaction currency as part of the Transaction amount. Without a currency symbol or identification, the Transaction currency defaults to the local currency of the country where the Transaction occurred.

A Merchant must not deposit Transaction Receipts resulting from any Transaction involving a Card between a Cardholder and another entity. A Merchant must deposit only Transaction Receipts that directly result from Cardholder Transactions with that Merchant.

A notification by the Bank of a violation at any one Merchant location requires the Merchant to ensure that the practice is discontinued at all locations covered by the Scotiabank Merchant Services Agreement.

A Merchant must not present Transactions that it knows or should have known to be fraudulent if not authorised by the Cardholder, or authorised by a Cardholder that is in collusion with the Merchant for a fraudulent intent. Within the scope of this rule, the Merchant is responsible for the actions of its employees and agents.

The Merchant must agree to comply with the Payment Card Industry (PCI) Security Standards.

In addition to the terms & conditions outlined in the Operation of this Agreement section of the Corporate & Commercial Financial Services Agreement, you agree to the following terms and conditions relating to assignment, termination and indemnification:

***Assignment***

- you and your principals, partners or proprietor shall provide the Bank with thirty days advance written notice of its intent to (i) sell or offer to sell goods or services which differ, in any substantial manner, from those represented by Merchant to the Bank upon the effective date of this Agreement, (ii) transfer or sell any substantial part (10% or more) of its total assets or liabilities, and/or (iii) liquidate or change the basic nature of its business.

***Termination***

- the obligations for any particular transaction completed on or prior to the date of termination shall survive termination;
- this Agreement shall come into effect on the date the POS Device(s) is delivered to you as outlined in this Agreement and shall remain in full force and effect unless either party terminates it by giving 30 days' written notice of period to the other party;
- we may terminate this Agreement and put a hold on the Merchant's Settlement account, without notice to the Merchant, if the Merchant becomes insolvent or bankrupt, or if we deem the Merchant to be insecure with respect to the Merchant's business.

Immediately upon termination, Merchant shall return all rented/leased imprints, forms, and other material supplied by us. All obligations of Merchant shall survive any termination as to any sales drafts acquired by us prior to the termination date, and to any extension or modification of such Sales Drafts. If required by us, the Merchant shall maintain an Escrow account with us based on estimated Chargeback and adjustment dollar volume outstanding. We will refund any remaining monies on deposit in the Escrow account to the Merchant no later than 180 days after termination of this Agreement. If monies are not sufficient in the Escrow account to cover said Chargebacks and adjustments pursuant to this Agreement, Merchant agrees to promptly pay any deficiency to us upon request. If it becomes necessary to enforce the obligations of Merchant, the Merchant agrees to pay all legal expenses incurred by us.

***Indemnification***

- You agree to indemnify us, our officers, directors, employees and agents and hold us and our officers, directors, employees and agents harmless from any claims whatsoever and howsoever arising, made:
  - by any Customer arising out of a Transaction; or
  - by any person if the Merchant recovers or attempts to recover Cards listed on a Card Recovery Bulletin.

The Merchant agrees to cooperate with the Bank in recovering any Cards listed on the Card Recovery Bulletin.

We and any of our officers, directors, employees and agents shall not be liable for any direct, indirect, or consequential damages incurred by the Merchant that results from termination of this Agreement, or that are incurred by the Merchant which may arise if we are ever, for any reason, unable to perform any part of the Scotiabank Merchant Services, or if there are any errors in the performance of the Scotiabank Merchant Services outside our reasonable control or that arise if the POS Device fails to function or functions improperly;

In no event will we be responsible for the Merchant's acts or omissions or those of any third party;

If we incur fines from the associations as a result of the Merchant's actions or failure to comply with the rules of the associations, the fines will be passed to the Merchant and you agree to pay such fines immediately upon demand by us.

We do not represent or warrant that the Scotiabank Merchant Services will be available to process Transactions during specified times.

We reserve the right to suspend or completely cancel any portion of the Scotiabank Merchant Services Agreement, at any time, without prior notice to the Merchant.

You agree to be solely responsible for the accuracy and completeness of information provided to us, including the information provided in the Scotiabank Merchant

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Services Pricing Schedule. The Merchant will indemnify and hold the Bank and its officers, directors, employees and agents harmless from any and all loss or liability to which the Bank may be subjected in connection with any claim arising out of the inaccuracy or incompleteness of such information.

If you are an internet Merchant:

- you are solely responsible for the accuracy and completeness of information furnished to Scotiabank for the authorization, processing and settlement of Internet Transactions. You agree to indemnify us and our officers, directors, employees and agents and hold us our officers, directors, employees and agents harmless from all loss or liability which we incur or may be subjected to in connection with any claim arising out of the inaccuracy or incompleteness of such information. You acknowledge that we are not responsible for the unauthorised use of any electronic service by any of your employees, agents or any other person or entity.

You agree to indemnify us and our officers, directors, employees and agents and hold us and our officers, directors, employees and agents harmless from and against any and all claims against us arising out of or resulting from the actions of you or your employees, agents or any claim by a Cardholder, Association or local authority. Neither party shall be liable for its failure to perform under this Agreement if such failure arises out of causes beyond the control and without the fault or negligence of such party.

### ***Local Debit Card***

As a participating Merchant, you must accept Debit Cards that participate in the Local Debit Networks and/or Association branded Cards properly presented for payment at your point of sale. You must examine the Card to see if it contains the local network logo to determine if the Card participates in the Local Debit Network. You may not require additional information from the Cardholder, other than the Personal Identification Number, for the completion of the Transaction unless the circumstances appear suspicious. A signature is not required for online Local Debit Network Transactions.

The Merchant is not allowed to process off-line Transactions.

In respect of the operation of the Debit POS Service, Scotiabank (or its service providers) shall perform for the Merchant the following services:

- transaction Authorisations – Upon the transmission of an Authorisation request for a Debit POS Transaction by electronic means, Scotiabank (or its service providers) shall verify the availability of funds in the account of the Cardholder effecting the Transaction. If the Cardholder's account contains sufficient funds to perform the Transaction, Scotiabank in order to process the Amount of the Transaction shall transmit to the Merchant an authorisation number, which will be printed on the receipt issued by the POS Terminal. If the Cardholder's account does not contain sufficient available funds or the authorisation request is otherwise refused (e.g. incorrect PIN entered), a negative response or declined Transaction shall be displayed on the screen of the POS Terminal and printed on the receipt issued by such POS Terminal.

You agree to retain a copy of each completed Sales Draft and any other records relating to the Transaction for a minimum period of six (6) years from the date of the Transaction. You agree to provide the Bank with either the original or a legible copy of any of these records within three (3) days of the Bank's request (or longer where required by law).

You agree that our records as to whether any Transaction has been performed and our account or determination of the details of the Transactions will be correct and binding on you in the absence of any contrary evidence that is satisfactory to us.

You agree to process Local Debit Transactions electronically with the POS Device(s) we provide to you in accordance with this Agreement. The Bank may issue additional written directions regarding operational procedures that the Merchant must follow and prescribed forms that the Merchant must use to carry out this Scotiabank Merchant Services Agreement. The directives given by us and the terms of such prescribed forms are binding on you upon receipt.

All parties involved in processing Adjustments are regulated by timeframes that are specified in the operating rules of the applicable Local Debit Network or Card Association.

The following general requirements apply to all Local Debit Network Transactions:

Authorisation Procedures:

- (a) all Debit Transactions must be authorised and processed electronically. There is no telephone voice Authorisation or manual imprinter procedure involved for Debit Card Transactions.
- (b) you may not complete a Debit Card Transaction that has not been authorised. If you are unable to obtain an authorisation, you should request another form of payment from the Cardholder. The Cardholder should be instructed to contact the financial institution that issued the Card to find out why a Transaction has been declined.
- (c) you may not complete a Debit Card Transaction without entry of the Personal Identification Number (PIN) by the Cardholder.
- (d) the PIN must be entered into the POS terminal only by the Cardholder. You cannot accept the PIN from the Cardholder verbally or in written form. You agree to maintain the confidentiality of a Cardholder's PIN at all times and to never request the PIN from a Cardholder. You also agree to situate the POS Terminal in a way that minimizes risk of disclosure when the Cardholder enters the PIN.
- (e) if the printer is not operational and the POS Device has successfully processed the Transaction, you agree to provide the Cardholder with an alternative record such as a sales slip showing the Debit Card account number embossed on the Card, to indicate that payment was made with the Card and to give one copy of the completed sales slip to the Cardholder.

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- (f) you may not manually enter the Card account number. The Card account number must be read electronically from the magnetic stripe. If the magnetic stripe is unreadable, you should request another form of payment from the Cardholder.
  - (g) any applicable taxes must be included in the total Transaction amount for which the Authorisation is requested. Taxes may not be collected separately from the Cardholder in cash.

Cashback from purchase (Optional) – Subject to our approval, you may have the option of offering cashback to your Cardholders when they make a Debit Card purchase. You may set a minimum and maximum amount of cashback that you will allow the Cardholder to receive for each Transaction processed.

Refunds and returns – The Merchant shall not with regard to the exchange, return or adjustment of any goods or services discriminate against any Cardholder. There is no return/credit Transaction available through the Debit POS Service. If goods or services are returned, or any price adjustment is allowed after a Debit POS Transaction has been authorised, the Merchant shall handle the return/adjustment directly with the Cardholder using another form of payment to the Cardholder (i.e., via cash refund or cheque).

### ***Settlement***

The Merchant agrees to maintain a Settlement Account with the Bank at the branch specified in the Scotiabank Merchant Services - Service Request & Pricing Schedule.

Upon Authorisation and subsequent batch settlement request, Scotiabank will credit the Merchant's settlement account for the amount of the POS Transactions. Fees, adjustments and fines levied directly against the Merchant by the Card Association and Local Debit Network and fines, levies, charges and assessments levied against the Bank in respect of which the Merchant has agreed to indemnify the Bank will also be settled through the same account. Except for adjustment and chargeback by the Bank, Merchant shall not receive payment in respect of any Transaction presented to the Bank for clearing and settlement from any party except the Bank.

If the Merchant subscribes to the EDC service and uses a POS Device or other service to transmit electronically to obtain Authorisations and capture Transaction data, the Bank will, within a reasonable time (normally within two business days) of receiving the Transaction information, credit your Account for the net amount of the Sales Drafts less any Credit Vouchers and any applicable discounts or fees.

All deposit figures are subject to the Bank's final audit. If there are any errors or inaccuracies, the Bank will debit or credit your Settlement Account, without notice, for any deficiencies or overages.

Each business day, you must balance your Sales to the POS system via a batch submission. This includes printing applicable reports, credits and refunds prior to submitting your batch close and settlement.

The Merchant must reconcile all Card Transaction receipts to settlement received and notify the Bank of any errors within sixty (60) days of the Transaction occurring.

The Merchant shall to the best of its ability, forward to the Bank copies or electronic equivalent of the Sales Drafts and Credit Vouchers on a daily basis.

### ***Card Security Features***

The Merchant agrees to examine all Cards presented by Customers in order to ensure that every Card has the security features deemed necessary to be considered valid. The Bank will notify the Merchant of these procedures.

A Merchant must not store in any system or in any manner, discretionary card read data, CVV2/ CVC2 data or PIN data, except during the Authorisation process for a Transaction, that is, from the time an Authorisation Request message is transmitted and up to the time the Authorisation Request Response message is received.

### ***Chargeback Rights***

Although the Merchant may have been granted an Authorisation for a Transaction from or on behalf of the Card issuer, the Bank may refuse to credit your Settlement Account for the total amount of a Sales Draft, or chargeback the Transaction to you if:

- (a) the merchandise referred to in the Sales Draft is claimed by the Customer to have been returned to the Merchant, or not to have been received by the Customer;
- (b) the Services referred to in the Sales Draft have not been received by the Customer or are claimed by the Cardholder to be unsatisfactory;
- (c) the Bank reasonably believes the Merchant attempted to reduce or disguise the amount of a single Transaction by using multiple Sales Drafts (known as split ticketing);
- (d) the Merchant failed to comply with the terms of this Scotiabank Merchant Services Agreement;
- (e) the Cardholder disputes a mail order, telephone order, Internet, or pre-authorised order Transaction for any reason whatsoever;
- (f) the Card issuer returns the Sales Draft to us because of a delay on your part in submitting the Transaction;
- (g) the Merchant fails to examine the Card in order to ensure that it complies with Card security features established at the time of the Transaction;
- (h) the signature on the Sales Draft is, or is claimed by the Customer to be, forged or unauthorised; the Card was unsigned; or the signature on the Card is not similar to the signature on the Sales Draft;
- (i) the Merchant completed a Sales Draft that exceeds the Floor Limit and did not obtain an Authorisation or the Bank notified the Merchant not to honour the Card for the Transaction;

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- (j) the Sales Draft is illegible;
  - (k) the Sales Draft is incomplete;
  - (l) the Transaction, as evidenced by a Sales Draft or other credit extension, includes an unauthorised cash advance that the Merchant has made to a Customer;
  - (m) the Transaction, as evidenced by a Sales Draft or other credit extension, is for any reason illegal, null, or invalid;
  - (n) the Card used in a Transaction was listed on a Card Recovery Bulletin that was sent to the Merchant prior to the Transaction;
  - (o) the Transaction is deemed by the Cardholder or Authorised user to be fraudulent or unauthorized;
  - (p) the Merchant deposited more than one copy of the same Sales Draft or the Bank has credited your Settlement account more than once for the same Sales Draft;
  - (q) the Merchant deposited or attempted to deposit Sales Drafts for fictitious Transactions, or have otherwise defrauded or attempted to defraud us;
  - (r) the Merchant imprints, deposits, or processes a Sales Draft or Credit Voucher resulting from merchandise sold or services performed (or alleged to have been sold or performed) by parties other than the Merchant;
  - (s) the Card used in the Transaction is expired or not yet valid at the time of the Transaction, unless the Bank specifically authorised the Merchant to complete the Transaction;
  - (t) the Cardholder was charged an incorrect amount, either too little or too much;
  - (u) the Cardholder was charged more than once for the same Transaction;
  - (v) a processing error may have occurred that caused the Cardholder to be charged even though the Transaction did not complete normally at the point of sale;
  - (w) the Cardholder disputes the Transaction, the Transaction was not successfully completed; or
  - (x) the Transaction is for any reason illegal, null or invalid.

Provided it is not a violation of our privacy obligations under applicable laws, the Bank may provide you with such relevant information that is available to us regarding any Sales Draft that we refuse to pay or that we chargeback to you.

You will be responsible for all applicable adjustments and fees that may be charged.

You must take appropriate actions to reduce the number of Chargebacks received and respond to all Chargeback notices we deliver to you.

The Bank reserves the right to chargeback to your Settlement Account if you continue to charge a Cardholder for a Recurring Payment despite notification of cancellation by the Cardholder.

The Bank agrees to provide you with relevant information that is available to us regarding any Sales Draft that we refuse to pay or that we Chargeback to you.

All parties involved in processing adjustments are regulated by timeframes that are specified in the operating rules of the applicable Local Debit Network and Credit Card Associations.

### ***Relations with Customers***

The Merchant agrees to settle all Customer claims and disputes about a Transaction directly with the Customer.

The Merchant agrees not to require personal information from the Customer as a condition of the Sale, including home or work address, telephone number, or driver's license for any Transaction.

The Merchant agrees that the Bank is not responsible for attending to and servicing any Customer queries, complaints, and requests regarding goods and services purchased.

If a Customer inadvertently leaves a Card at the Merchant's premises, the Merchant agrees to promptly return the Card to the Customer. If the Customer does not claim the Card within 24 hours, the Merchant agrees to cut the Card in half and deliver it to the Bank at the first available opportunity.

The Merchant agrees not to give cash as credit for a return or adjustment on a Sale that was paid for by a Credit Card. The Merchant will issue a Credit Voucher for the amount of the return or adjustment, except for the cases in which we have refused to credit the Transaction amount to the Merchant's Settlement Account or have done a Chargeback of the amount back to you.

If the Merchant subscribes to the Scotiabank Merchant EDC Service, the Merchant agrees to process the credit through the POS Device in accordance with the procedures that the Bank establishes from time to time.

In order to protect the Cardholder's privacy, the Merchant agrees not to list the Card account number as an identification feature on other payment forms such as cheques.

The Merchant agrees to obtain our prior written approval before using any advertising for your business that includes Scotiabank, the Card Association or the Local Debit Network names, trademarks, service marks, logos, symbols, etc. or any representation of these. If you include these names or logos, you may use them to show that you accept these branded Cards, and not that Scotiabank or any of its affiliates endorses any or all of your goods or services.

The Merchant must prominently and unequivocally inform the Cardholder of the identity of the Merchant at all points of interaction so that the Cardholder can readily distinguish the Merchant from any other party such as a supplier of goods or services to the Merchant.

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## ***Fees and Debits***

The Merchant agrees to pay the Bank all fees outlined in the Scotiabank Merchant Services - Service Request & Pricing Schedule.

The Merchant agrees to pay the Bank in accordance with the pre-determined monthly rental fee plus all applicable taxes for any devices the Merchant acquires from the Bank. The Bank will debit your Settlement Account each month for this rental fee. The Merchant acknowledges that all devices will remain the Bank's exclusive property and agrees to return them to the Bank on demand.

The Bank will deduct its fees from the Sales Drafts that the Merchant delivers to the Bank or charge them to your Settlement Account, in accordance with the procedures established by the Bank.

If Transactions are not authorised, processed, or presented in accordance with the specific requirements of reduced interchange programs with Visa International and MasterCard International, then the difference between the "standard" and reduced rate will be billed to the Merchant. Merchant agrees that all fees, charges, credits, Chargebacks or adjustments that the Merchant may owe constitute a debt that is payable on demand, and the Bank may debit the Merchant's Settlement Account without prior notice.

If there are insufficient funds in the Merchant's Settlement Account, the Merchant authorises the Bank to debit any other account the Merchant has with the Bank.

If any such debit results in an overdraft in the Merchant's Settlement Account or other account the Merchant maintains with us, the Merchant will, on demand, pay the Bank the amount of such overdraft together with applicable interest and fees.

The fees set forth in the Service Request & Pricing Schedule are subject to change to accommodate the imposition of new or amended fees by third parties including additional processing costs arising from any requirements imposed by third parties beyond the normal processing contemplated hereunder, or from the imposition of new or amended regulations declared by the Associations or governmental requirements, and will be immediately effective upon the effective date of such adjustment.

If the Sales Volume and Average Transaction Size information provided by the Merchant in the Business Account Application is inaccurate, the Bank reserves the right to adjust the rates charged to reflect the revised information.

The fees listed in the Pricing Schedule are subject to change, and the Bank may amend these fees upon sixty (60) days' prior written notice to you, unless the change results from new or amended fees imposed by third parties.

The Merchant agrees that they will be responsible for any additional charges in relation to using a communication line other than the primary.

## ***Additional Obligations***

The Merchant agrees not to alter any of our, the Association's, the Local Debit Network's

trademarks, trade names, design marks, service marks, or logos in any manner.

The Merchant shall not imprint, deposit, or process any Sales Drafts and Credit Vouchers resulting from merchandise sold or services performed (or alleged to have been sold or performed) by parties other than the Merchant.

The Merchant agrees not to disclose or remit to any third party, Cardholder account information or other documents or forms evidencing such information.

The Merchant agrees to comply with the operating guidelines issued by the Bank.

The Merchant agrees to comply with the operating guidelines issued by the Bank. The Merchant agrees that the Bank may obtain whatever commercial and credit information is deemed appropriate with respect to the Merchant. The Merchant also allows the Bank to provide information about the Merchant to third parties such as credit bureaus, credit reporting agencies and other financial institutions.

You agree to furnish us with financial statements and any other information we may require concerning you, the business, or your affiliates as the Bank may occasionally request.

You must not:

- indicate or imply that an Association Card endorses any Merchant goods or services;
- refer to Association Card in stating eligibility for its products, services, or membership; or
- use all Association Card Marks for any purpose other than those permitted in the Association Card International Operating Regulations, or without written permission from them.

The Merchant must notify us if the nature of goods has been changed.

The Merchant agrees to give us authorisation with prior notice and during your normal business hours, our duly authorised representatives may visit your business premises and may examine only that part of your books or records that pertain to your card sales, a physical inspection of the Merchant location, and an audit of the Merchant website, if applicable.

The Merchant agrees to display Scotiabank signs, Card and local network decals or other identification, including our “Take-One” containers filled with Card application forms, in all high traffic areas, such as near your POS terminal(s) front desk, cashiers locations and restaurants. If you terminate this Agreement, you agree to remove any decals and signs from your POS Terminals and location.

### ***Operational Procedures***

The Bank may issue written directions regarding operational procedures that the Merchant must follow and prescribed forms that the Merchant must use. These directions and the terms of these forms are binding as soon as received by the Merchant.

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We may, in our discretion, amend the Scotiabank Merchant Services Agreement or any schedule or addendum forming part of this Agreement, by giving sixty (60) days' notice in writing to you. Your continued transmittal of Sales Drafts and/or electronic Transaction records to us after an amendment's effective date shall constitute your acceptance of the amendment.

### ***Equipment***

#### **1. If The Equipment Is Rented:**

We agree to provide you with the POS Device(s) as requested in the Service Request & Pricing Schedule to process Transactions electronically. This equipment remains our property at all times. If you need additional or different POS Device(s), we agree to modify your POS Device(s) accordingly, and will price the different options for you at the time of your request.

The title to the equipment is, and at all times shall remain, with our supplier or us.

We agree to maintain, at our expense, the POS Device(s) you use to process Transactions at your business in good working order for the term of this Agreement.

If the POS Device(s) requires repair, maintenance, or replacement because of conditions beyond our control or reasonable wear and tear, including any negligence or willful misconduct on your part, such repair, maintenance, or replacement will be at your expense. If the POS Device(s) is damaged beyond repair, you agree to purchase such equipment for the residual value that we will determine from time to time.

You agree that we and any of our agents will have full and free access to the POS Device(s), and other equipment you obtain from us during reasonable business hours for maintenance purposes.

You agree that you will not permit persons other than our authorised agents to adjust, repair, or otherwise maintain the POS Device(s).

We make absolutely no conditions or warranties either express or implied as to merchantable quality or fitness for purpose of any equipment or POS Device.

We assume all responsibility for loss of a POS Device(s) only until it has been delivered to you upon delivery. At that time, you agree to assume full responsibility for the loss or theft of any of the equipment or POS Device. If a POS Device is lost or stolen, you agree to purchase such equipment for the residual value that we will determine at that time.

You agree to possess and use the POS Device(s) during the term of this Agreement.

Upon termination of this Scotiabank Merchant Services Agreement, you agree to return, at your expense, any equipment to us at a location we designate, in good condition, with only reasonable wear and tear accepted. Or, at our option, we may enter the premises where the equipment is located and take possession of it, during reasonable business hours and at your expense.

You agree not to remove any labels or tags that we specify that you should keep attached to any equipment we supply to you.

You agree to install the required communication or to make any modifications to existing connections that may be necessary to install the POS Device(s). You agree to pay the cost of the communication line installation/maintenance, which is or may be necessary to support the Electronic Service. You will also provide the required suitable electrical current to operate, and a suitable place to install the POS Device(s).

You agree not to remove or relocate the POS Device(s) or other equipment we provide from the location named in the Scotiabank Merchant Services – Service Request & Pricing Schedule, unless you have obtained our prior written consent to such removal or relocation. You are responsible for all expenses of relocation. You also agree not to sublet, assign, or transfer the POS Device(s) unless you have obtained our prior written consent.

## 2. If The Equipment Is Sold:

At all times the Equipment shall be placed at the locations indicated for each piece of Equipment noted on the Scotiabank Merchant Services - Service Request & Pricing Schedule, and shall not be removed from such locations without notice to the Bank. Such placement shall constitute consideration of the Merchant's participation in the Electronic Draft Capture system.

The Merchant has sole responsibility for maintaining the Equipment in good working condition. The Merchant may request assistance from the Bank in obtaining service and repairs from the manufacturer, under the terms of the manufacturer's warranty.

The Merchant hereby authorises the Bank to debit the Merchant's Settlement Account as specified in the Scotiabank Merchant Services - Service Request & Pricing Schedule for the sale amount of the terminal specified in the Scotiabank Merchant Services - Service Request & Pricing Schedule.

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# Our Commitment to You – Satisfaction Guarantee

When we make changes or open an account, we always want to ensure that we are helping you find the right account for your banking needs. If you are not satisfied with the changes made to your account, you may select an alternate Scotiabank account within 90 days of the effective date of changes.

On request, we will refund the difference, if any, between the fees paid on your account and the fees that you would have paid with your alternate account choice on the effective date of the changes.