

This Braintree Payment Services Agreement, and the agreements, policies, and documents incorporated herein, (this "Agreement"), is entered into by and between PayPal Canada Co, a Nova Scotia corporation whose principal business address is MaRS Centre, West Tower, 661 University Ave., Suite 506, Toronto, ON M5G 1M1 ("Braintree," "PayPal," "we," or "our") and the entity or individual who enters into this Agreement ("Merchant" or "you"). This Agreement sets out the terms and conditions under which you may utilize the Braintree Payment Services.

This Agreement becomes a legally binding contract and is effective as of the earliest date you do any of the following (the "Effective Date"):

- Create an account on the Braintree website;
- Accept this Agreement online; or
- Begin using the Braintree Payment Services.

This Agreement, as it may be amended from time to time, will be available on the "Legal" tab on the Braintree website. In addition to the terms of this Agreement, you agree to be bound by the terms of our Privacy Statement and Acceptable Use Policy, as well as your applicable Bank Agreement(s), which are incorporated herein by this reference.

Information Summary

Date of contract(s) - Effective start date: This Agreement begins on the earlier of your creation of an account on the Braintree website, acceptance of this Agreement or use of the Braintree Payment Services.

Acquirer - Moneris Solutions Corporation (on behalf of itself and its sponsor banks Royal Bank of Canada and Bank of Montreal)

1(866) 319-7450

P.O. Box 219, Station D, Toronto, ON M6P 3J8

Cancellation of contract(s) and any applicable penalties - You may terminate this Agreement at any time and without penalty by providing PayPal with notice of your intent to terminate. We may terminate this Agreement in accordance with Section 8.01 of the Agreement.

Complaint handling procedures - For complaints directed to PayPal, please contact: [Help Form](#)

Transaction return policy - Fully and partially refunded transactions will incur a \$.30 fee. No additional fees will be charged for voids.

Independent Sales Organization or Referral Agent (where applicable) - Independent Sales Organization: PayPal Canada Co. PayPal Canada Co acts as an independent sales organization for Moneris Solutions Corporation (on behalf of itself and its sponsor banks Royal Bank of Canada and Bank of Montreal).

Code of Conduct - You may access the Code of Conduct for the Credit and Debit Card Industry [here](#).

Statements - You will receive paper statements by mail on a monthly basis, free of charge.

Payment card type: Fee (card not present)

- Visa Debit: 2.9% + \$.30 per transaction
- Visa Credit: 2.9% + \$.30 per transaction
- MasterCard Debit: 2.9% + \$.30 per transaction
- MasterCard Credit: 2.9% + \$.30 per transaction
- American Express: \$.30 per transaction

Section 1 — Braintree Payment Services**1.01 “Braintree Payment Service(s)” means:**

- a. “Payment Processing Services” means the payment processing services offered by PayPal which provide merchants with the ability to accept credit cards, debit cards, and other payment methods on a website or mobile application. These services include Gateway Services, a Bank-sponsored Merchant Account, Fraud Protection Tools (each as defined in this Agreement), recurring billing functionality, payment card storage, foreign currency acceptance, white glove customer support, and other software, APIs and services and technology as described on the Braintree website. The Payment Processing Services also may include services provided by Acquirer pursuant to your applicable Bank Agreement. PayPal and Acquirer reserve the right to allocate among themselves their respective rights and obligations under this Agreement and the Bank Agreement as they deem appropriate in their sole discretion and subject to compliance with applicable law and regulations and the requirements of the Networks.
- b. “Gateway Services” means the gateway services offered by PayPal which provide Merchants with the software and connectivity required to allow real-time secure data transmission for processing of credit card payments, debit card payments and certain other available payment methods on a website or mobile application. The Gateway Services include those additional products and services provided by PayPal, including but not limited to the Forwarding Services and Grant Services, (“PayPal Products and Services”) which are provided subject to the additional [PayPal Products and Services](#) as set forth on the Braintree website which are incorporated into this Agreement by reference. In addition, the Gateway Services include certain payment technology services provided by third parties that are used to facilitate your processing of credit and debit card payments (“Payment Technology Services”). In order to use these services, you agree to the applicable [Payment Technology Services terms](#) as set forth on the Braintree website which are incorporated into this Agreement by reference. You acknowledge and agree that the Payment Technology Services are provided solely by the relevant third party (and not PayPal) as set forth in the applicable Payment Technology Services terms, and that PayPal will under no circumstances be responsible or liable for any damages, losses or costs whatsoever suffered or incurred by you resulting from any Payment Technology Services.
- c. “Fraud Protection Tools” means the optional fraudulent transaction management tools made available as part of the Braintree Payment Services that, if enabled by you or PayPal

on your behalf, allow you to access fraudulent transaction management features to help detect fraudulent transactions based on the settings you may adopt, as described in more detail on the Braintree website (“Fraud Protection Tools”). If you elect to enable and use or disable the Fraud Protection Tools, you are responsible for determining which tools to use and for setting or modifying your filter rules, which instruct us as to which Transactions to accept and decline on your behalf. If you set these filter rules too restrictively, you might lose sales volume. It is your responsibility to monitor your filter rules and settings on an ongoing basis. We may suggest filters and settings that may be appropriate for your business, based on factors such as your business profile and transaction history, however it is your responsibility to evaluate the usefulness and risk of any information, product or service. It is your sole responsibility to provide any necessary notices and disclosures, and obtain any required consents, on the use of the Fraud Protection Tools to your Customers on your website or mobile application. You shall use the Fraud Protection Tools in accordance with the applicable guides and other documentation made available by us, and you shall not use or permit others to use information obtained through the use of the Fraud Protection Tools for any purpose other than in conjunction with the Payment Processing Services and in a manner described in the applicable documentation for the Fraud Protection Tools. You acknowledge and agree that, in accordance with Section 7.03, PayPal does not represent or warrant that the Fraud Protection Tools are error free or that they will identify all fraudulent transaction activity. In addition, PayPal shall not be liable whether a transaction is accepted or rejected using the Fraud Protection Tools. You are responsible for your optional use of the Fraud Protection Tools, including any filters or settings you enable.

Section 2 — Fees, Payouts, Taxes and Account Activity

2.01 Fees

In exchange for us providing you with the Braintree Payment Services, you agree to pay us the fees, including applicable transaction, multi-currency and Chargeback fees, as listed in the fee schedule, available at <https://www.braintreepayments.com/ca/braintree-pricing>, and incorporated herein by this reference. We reserve the right to revise our fees at any time, subject to a ninety (90) day notice period to you in the case of the introduction of a new fee or an increase of an existing fee related to credit or debit card transactions which applies to you, prior to such new fee or fee increase taking effect.

Interest shall accrue at the lower rate of 1.5% per month, or the maximum amount permitted by law, on all overdue amounts. In the event that you have a good faith dispute as to the amounts due, you agree to pay the undisputed amounts. Interest shall not accrue on any disputed amounts so long as you pay such amounts within ninety (90) calendar days after resolution of the dispute.

2.02 Payment of Fees, Payouts, and Right to Set-off

Subject to the terms of this Agreement, PayPal will instruct the Acquirer to remit to your Bank Account or to a Hyperwallet Settlement Account (if available to you), as duly nominated by you, all amounts due to you from your Transactions, minus any fees, Reversals, Invalidated Payments, Chargebacks, Refunds or other amounts that you owe to PayPal under this Agreement. If the Payout is not sufficient to cover the amounts due, you agree that we may debit your Bank Account for the

applicable amounts, and/or set-off the applicable amounts against future Payouts. Upon PayPal's request, you agree to provide PayPal with all necessary bank account routing and related information and grant PayPal permission to debit amounts due from your Bank Account.

2.03 Taxes

Except as otherwise specified herein, or as otherwise mutually agreed upon by the Parties, each Party will bear its own Taxes under this Agreement. **Taxes** means any taxes, charges, or similar assessments of any nature, including, without limitation, value-added, sales, digital services, stamp, transfer, or withholding taxes, assessable by any jurisdiction or governmental authority.

You are responsible for determining any and all Taxes assessed, incurred, or required to be collected, reported, paid, or withheld for any reason for the sale of your products and services and any Payouts you receive in connection with your use of the Braintree Payment Services. You are solely responsible for collecting, withholding, reporting and remitting correct Taxes to the appropriate tax authority. We are not obligated to, nor will we determine whether Taxes apply or assume any liability in relation thereto, or calculate, collect, report, or remit any Taxes to any tax authority arising from your transactions.

Taxes on Braintree Payment Services. The Parties agree as follows:

- i. Unless otherwise expressly specified in this Agreement, all amounts payable by Merchant to PayPal due under this Agreement are considered exclusive of applicable Taxes. The amounts payable by Merchant to PayPal under this Agreement will therefore be increased by the amount of the applicable Taxes unless: (i) otherwise expressly specified herein, or (ii) PayPal has determined that there is a lawful exemption from such Taxes. If PayPal is required to add such Taxes to the amounts due under this Agreement, it will issue a valid tax invoice to Merchant, made out in accordance with applicable legislation.
- ii. Merchant confirms it will not withhold any Taxes on amounts payable by Merchant to PayPal unless required under applicable law. In the event that Merchant is required to withhold any Taxes on any amounts payable to PayPal or make any deduction in relation hereto, the amounts payable to PayPal by Merchant will be increased by such additional amount to ensure that PayPal receives the full amount which would have been received had there been no deduction. Merchant will timely deliver to PayPal a copy of the tax receipt documenting payment of the withholding tax to the relevant authorities. Upon reasonable request, PayPal will provide such forms, certifications or other documents as Merchant may timely request in order to reduce or exempt withholding taxes.

Information Reporting

We may request that you provide PayPal with your tax identification number and/or other tax-related documentation or information. If you do not provide the requested information to PayPal or keep documentation up to date in your Braintree Payment Services account, you may be subject to limitations on your ability to use the Braintree Payment Services, withholding your Payouts, or placing a Reserve on your Payouts.

If you have a PayPal account, these terms are in addition to the terms in the PayPal User Agreement

or any other applicable agreement between you and PayPal. In the event of a conflict, this Agreement will control with respect to your Braintree Payment Services account.

2.04 Account Activity

With respect to Merchant's account activity accessible through the Braintree Payment Services, Merchant may raise to PayPal any discrepancy relating to Transactions, Payouts, fees and amounts owed by Merchant under this Agreement. Merchant shall notify PayPal in writing of any such discrepancy within ninety (90) days of the date the data is made available to Merchant through the Braintree Payment Services. Following the expiration of this period, Merchant's account activity shall be deemed as accepted and agreed by Merchant and PayPal shall have no obligation to correct any errors or discrepancies identified after such period.

Section 3 — Restricted Activities, Representations and Warranties

3.01 Restricted activities

In connection with your use of the Braintree Payment Services, you must comply with the Braintree Acceptable Use Policy: <https://www.braintreepayments.com/ca/legal/acceptable-use-policy>.

You agree that you will not:

- a. Breach this Agreement, the Bank Agreement, or any other agreement that you have entered into with us in connection with the Braintree Payment Services;
- b. Violate any federal, provincial, or local laws, rules, or regulations applicable to your business;
- c. Violate any rule, guideline, or bylaw of any of the Networks (the "Network Rules"), as they may be amended by the Networks from time to time. Some of the Network Rules are available at <https://usa.visa.com/support/consumer/visa-rules.html>; <https://www.mastercard.us/en-us/about-mastercard/what-we-do/rules.html>; and https://merchant-channel.americanexpress.com/merchant/en_CA/merchant-regulations?linknav=ca-merchsite-menutoolbar-merchantpolicy&inav=ca_mer_support_merchantplcy.
- d. Fail to provide us with any information that we reasonably request, in connection with this Agreement or your use of the Braintree Payment Services, about you or your business activities, including updated business records or financial statements, or provide us with false, inaccurate or misleading information;
- e. Refuse to cooperate in a legal investigation or audit that may be required by the Networks in connection with this Agreement or your use of the Braintree Payment Services;
- f. Integrate or use any of the Braintree Payment Services without complying with our requirements;
- g. Utilize recurring billing or card on file functionality without properly complying with Network Rules and applicable law, including obtaining your Customer's consent to be billed in such a manner, obtaining your Customer's consent to store their card on file for future or

recurring transactions and making available a mechanism for your Customer to delete their card on file;

- h. Submit any Transaction for processing through the Braintree Payment Services which does not represent a bona fide, permissible Transaction as outlined in this Agreement and in the Network Rules, or which inaccurately describes the product or services being sold or the charitable donations being made; and
- i. Process Transactions or receive payments on behalf of any other party, or redirect payments to any other party.

3.02 Representations and Warranties by Merchant

Merchant has the full power and authority to execute, deliver and perform this Agreement. This Agreement is binding and enforceable against Merchant and no provision requiring Merchant's performance is in conflict with its obligations under any agreement to which Merchant is a party.

Merchant is duly organized, authorized and in good standing under the laws of the province, region or country of its organization and is duly authorized to do business in all other provinces, regions or countries/regions in which Merchant's business operates.

Section 4 — Liability for Invalidated Payments and other Liabilities

You are liable for all claims, expenses, fines and liability we incur arising out of:

- a. a Chargeback, Refund, over-payment, payment error, or other invalid payment (collectively "Invalidated Payment");
- b. any error, negligence, misconduct or fraud by you, your employees, or someone acting on your behalf; and
- c. any losses resulting from your failure to comply with the terms of this Agreement, or your usage of the Braintree Payment Services.

In the event of an Invalidated Payment or other liability, in addition to our other rights and remedies (all of which are cumulative), we may (or instruct Acquirer to) deduct, set-off or recoup the amounts due to PayPal from your Payouts.

In addition to the above, if you have a past due amount owed to us or any of our affiliates under any other agreement, PayPal may instruct Acquirer to deduct the amounts owed from your Payouts. This includes amounts owed by your use of our various products and services which may include PayPal, Xoom and Hyperwallet.

Section 5 — Actions We May Take

5.01 Credit Report Authorization and Verification of Information

You authorize PayPal, directly or through third parties, to make any inquiries or take any actions we consider necessary to validate your identity, evaluate your creditworthiness, and verify information that you have provided to us. You authorize PayPal to obtain financial and credit information, such as pulling your personal credit report, or the credit report for your directors, officers, and principals.

By completing your application to become a PayPal customer, you are providing PayPal with written instructions and authorization in accordance with the Fair Credit Reporting Act to obtain such financial information or credit reports.

In the event that we are unsuccessful in receiving satisfactory information for us to verify your identity or determine that you are creditworthy, PayPal reserves the right to terminate this Agreement with immediate notice to you, cease to provide access to the Braintree Payment Services, and refuse or rescind any payment by your customers.

5.02 Actions by PayPal

If we believe that your Transactions pose an unacceptable level of risk, that you have breached the terms of this Agreement, or that your account has been compromised, we may take various actions to avoid liability. The actions we may take include, but are not limited to, suspending or limiting your ability to use the Braintree Payment Services, refusing to process any Transaction, reversing a Transaction, instructing Acquirer to hold your Payouts, and contacting your customers to verify Transactions and reduce potential fraud and disputes. If possible, we will provide you with advance notice of our actions and resolution steps. However, advance notice will not be provided if there is an immediate need to take actions such as a security threat, potential fraud, or illegal activity.

5.03 Reserves

PayPal, in its sole discretion, may instruct Acquirer to place a Reserve on a portion of your Payouts in the event that we believe that there is a high level of risk associated with your business, your Bank-sponsored Merchant Account, your PayPal account or your Transactions. If we place a reserve on your Payouts, we will provide you with notice specifying the terms of the Reserve. The terms may require that a certain percentage of your Payouts are held for a certain period of time, that a fixed amount of your Payouts are withheld from payout to you, or such other restrictions that PayPal determines in its sole discretion. PayPal may change the terms of the Reserve at any time by providing you with notice of the new terms.

PayPal may hold a Reserve as long as it deems necessary, in its sole discretion, to mitigate any risks related to your Transactions. You agree that you will remain liable for all obligations related to your Transactions even after the release of any Reserve. In addition, we may require you to keep your Bank Account available for any open settlements, Chargebacks and other adjustments.

5.04 Security Interest

To secure your performance of this Agreement, you grant to PayPal a legal claim to the funds held in the Reserve. This is known in legal terms as a “lien” on and “security interest” in these amounts.

5.05 Letter of Credit

In the event PayPal, in its sole discretion, believes there is a high level of risk associated with your business, your Bank-sponsored Merchant Account, your PayPal account or your Transactions, you shall duly cause to be delivered to PayPal a standby, unconditional, irrevocable letter of credit (the “Letter of Credit”) in the amount required by PayPal (the “Letter of Credit Amount”), with PayPal Canada Co. as beneficiary, by an acceptable bank and in a form and content satisfactory to PayPal in its sole discretion and within five (5) business days of PayPal's request. If at any time after

delivery of the Letter of Credit PayPal determines that the Letter of Credit Amount does not cover PayPal's potential risk related to processing your transactions hereunder or any other contract entered into by you and PayPal, then you agree to cause the Letter of Credit to be amended or to secure an additional Letter of Credit, within five (5) business days from our written request, in an amount to cover such exposure.

Merchant shall cause the Letter of Credit to be continuously maintained in effect until PayPal consents otherwise and shall furnish PayPal with a new or extended Letter of Credit at least sixty (60) days prior to the expiration of a Letter of Credit and ensure there is no gap in coverage. It shall be a default under this Agreement if a new or extended Letter of Credit is not provided. PayPal shall be entitled to draw the full amount of the Letter of Credit in such event.

PayPal may at any time make one or more draws from the Letter of Credit (without notice to you) up to the amount owed to PayPal hereunder or under any other contract between PayPal, its affiliates and you. PayPal may, but shall not be required to, apply or offset such proceeds of the Letter of Credit to cure such amounts owed to PayPal by Merchant. All fees and/or costs, including without limitation attorneys' fees and costs, incurred related to the Letter of Credit shall be paid solely by Merchant. Merchant authorizes PayPal, at its election, to charge Merchant's account(s) with PayPal for all such fees and costs.

In addition to all of PayPal's other rights and remedies under this Agreement or applicable law, PayPal shall have the right to immediately terminate this Agreement in the event Merchant fails (i) to furnish PayPal with a Letter of Credit within the timeframes stated in this Section; or (ii) to maintain the Letter of Credit as provided herein. In addition, the delivery of the Letter of Credit shall not act as a cure or waiver of any now existing or hereafter arising breaches or defaults under the Agreement.

Section 6 – Account Security, Data, Intellectual Property and Publicity

6.01 Security of your access

You agree to:

- a. Not allow anyone else to have or use your password details and to comply with all reasonable instructions we may issue regarding account access and security. In the event you share your password details, PayPal will not be liable to you for losses or damages caused by such sharing;
- b. Keep your personal details up to date. We may be unable to respond to you if you contact us from an address, telephone number or email account that is not registered with us; and
- c. Take all reasonable steps to protect the security of the personal electronic device through which you access the Braintree Payment Services (including, without limitation, using PIN and/or password protected personally configured device functionality to access the Braintree Payment Services and not sharing your device with other people).

6.02 Data Security Compliance

Merchant agrees to comply with applicable data privacy and security requirements under the Payment Card Industry Data Security Standard ("Network PCI DSS Requirements") and any applicable Network data security requirements with regards to Merchant's use, access, and storage of certain credit card non-public personal information. In order to verify your compliance with Network PCI DSS Requirements, you must complete and demonstrate certification pursuant to the requirements that we notify to you. Additionally, Merchant agrees to comply with its obligations under any applicable law or regulation as may be in effect or as may be enacted, adopted or determined regarding the confidentiality, use, and disclosure of cardholder information. You must report any Customer Data breach or incident to PayPal and/or the Networks immediately after discovery of the incident. You also agree to ensure data quality and that any Customer Data is processed promptly, accurately and completely, and complies with the Networks' technical specifications.

PayPal agrees to comply with the applicable Payment Card Industry Data Security Standard ("PCI DSS"). PayPal acknowledges that it is responsible for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of the Merchant, or to the extent that PayPal could impact the security of the cardholder data environment.

6.03 Data Protection

The parties agree to comply with the data protection addendum found [here](#), which forms part of this Agreement. The terms of the data protection addendum prevail over any conflicting terms in this Agreement relating to data protection and privacy.

6.04 Software License

PayPal grants you a revocable, non-exclusive, non-transferable, royalty-free limited license to access and/or use PayPal's APIs, developer's toolkit, and other software in accordance with the accompanying documentation made available by PayPal for purposes of using the Braintree Payment Services. This license grant includes all updates, upgrades, new versions and replacement software for your use in connection with the Braintree Payment Services. If you do not comply with the documentation and any other requirements provided by PayPal, then you will be liable for all resulting damages suffered by you, PayPal and third parties. Unless otherwise provided by applicable law, you agree not to alter, reproduce, adapt, distribute, display, publish, reverse engineer, translate, disassemble, decompile or otherwise attempt to create any source code that is derived from the Software. Upon expiration or termination of this Agreement, you will immediately cease all use of any Software.

6.05 Trademark License

PayPal grants you a revocable, non-exclusive, non-transferable license to use PayPal's trademarks used to identify the Braintree Payment Service (the "Trademarks") solely in conjunction with the use of the Braintree Payment Service. Merchant agrees that it will not at any time during or after this Agreement assert or claim any interest in or do anything that may adversely affect the validity of any Trademark or any other trademark, trade name or product designation belonging to or licensed to PayPal (including, without limitation registering or attempting to register any Trademark or any such

other trademark, trade name or product designation). Upon expiration or termination of this Agreement, you will immediately cease all display, advertising and use of all of the Trademarks.

6.06 Intellectual Property

Other than the express licenses granted by this Agreement, PayPal grants no right or license by implication, estoppel or otherwise to the Braintree Payment Service or any Intellectual Property Rights of PayPal. Each party shall retain all ownership rights, title, and interest in and to its own products and services (including in the case of PayPal, in the Braintree Payment Service) and all Intellectual Property Rights therein, subject only to the rights and licenses specifically granted herein.

6.07 Publicity

Merchant hereby grants PayPal permissions to use Merchant's name and logo in its marketing materials including, but not limited to use on Braintree's website, in customer listings, in interviews and in press releases.

6.08 Confidential Information

The parties acknowledge that in their performance of their duties hereunder either party may communicate to the other (or its designees) certain confidential and proprietary information, including without limitation information concerning the Braintree Payment Services and the know how, technology, techniques, or business or marketing plans related thereto (collectively, the "Confidential Information") all of which are confidential and proprietary to, and trade secrets of, the disclosing party. Confidential Information does not include information that: (i) is public knowledge at the time of disclosure by the disclosing party; (ii) becomes public knowledge or known to the receiving party after disclosure by the disclosing party other than by breach of the receiving party's obligations under this section or by breach of a third party's confidentiality obligations; (iii) was known by the receiving party prior to disclosure by the disclosing party other than by breach of a third party's confidentiality obligations; or (iv) is independently developed by the receiving party. As a condition to the receipt of the Confidential Information from the disclosing party, the receiving party shall: (i) not disclose in any manner, directly or indirectly, to any third party any portion of the disclosing party's Confidential Information; (ii) not use the disclosing party's Confidential Information in any fashion except to perform its duties hereunder or with the disclosing party's express prior written consent; (iii) disclose the disclosing party's Confidential Information, in whole or in part, only to employees and agents who need to have access thereto for the receiving party's internal business purposes; (iv) take all necessary steps to ensure that its employees and agents are informed of and comply with the confidentiality restrictions contained in this Agreement; and (v) take all necessary precautions to protect the confidentiality of the Confidential Information received hereunder and exercise at least the same degree of care in safeguarding the Confidential Information as it would with its own confidential information, and in no event shall apply less than a reasonable standard of care to prevent disclosure.

6.09 Data Portability

Upon any termination or expiry of this Agreement, Braintree agrees, upon written request from Merchant, to provide Merchant's new acquiring bank or payment service provider ("Data

Recipient”) with any available credit card information including personal data relating to Merchant’s Customers (“Card Information”). In order to do so, Merchant must provide Braintree with all requested information including proof that the Data Recipient is in compliance with the Network PCI-DSS Requirements and is level 1 PCI compliant. Braintree agrees to transfer the Card Information to the Data Recipient so long as the following applies: (a) Merchant provides Braintree with proof that the Data Recipient is in compliance with the Network PCI-DSS Requirements (Level 1 PCI compliant) by providing Braintree a certificate or report on compliance with the Network PCI-DSS Requirements from a qualified provider and any other information reasonably requested by Braintree; (b) the transfer of such Card Information is compliant with the latest version of the Network PCI-DSS Requirements; and (c) the transfer of such Card Information is allowed under the applicable Network Rules, and any applicable laws, rules or regulations (including data protection laws).

Section 7 - Indemnification, Limitation of Liability, Disclaimer of Warranties

7.01 Indemnification

Merchant agrees to indemnify, defend, and hold harmless PayPal, its parent, affiliates, officers, directors, agents, employees and suppliers from and against any lawsuit, claim, liability, loss, penalty or other expense (including attorneys' fees and cost of defense) they may suffer or incur as a result of (i) your breach of this Agreement or any other agreement you enter into with PayPal or its suppliers in relation to your use of the Braintree Payment Services; (ii) your use of the Braintree Payment Services; and/or (iii) your violation of any applicable law, regulation, or Network Rules and requirements.

7.02 LIMITATION OF LIABILITY

PAYPAL SHALL NOT BE LIABLE TO YOU OR A THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE BRAINTREE PAYMENT SERVICES, WHETHER FORESEEABLE OR UNFORESEEABLE, AND WHETHER BASED ON BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT, OR OTHER CAUSE OF ACTION (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, GOODWILL, PROFITS, INVESTMENTS, USE OF MONEY, OR USE OF FACILITIES; INTERRUPTION IN USE OR AVAILABILITY OF DATA; STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS; OR LABOR CLAIMS), EVEN IF PAYPAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. UNDER NO CIRCUMSTANCES SHALL PAYPAL’S TOTAL AGGREGATE LIABILITY TO MERCHANT OR ANY THIRD PARTY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE DIRECT DAMAGES SUFFERED BY SUCH PARTY IN AN AMOUNT EQUAL TO THE AMOUNTS PAID OR PAYABLE BY MERCHANT TO PAYPAL UNDER THIS AGREEMENT DURING THE FIRST TWELVE (12) MONTH PERIOD AFTER THE EFFECTIVE DATE OF THIS AGREEMENT.

7.03 Disclaimer of Warranties

THE BRAINTREE PAYMENT SERVICE IS PROVIDED “AS IS” WITHOUT ANY WARRANTY WHATSOEVER. PAYPAL DISCLAIMS ALL WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, TO MERCHANT AS TO ANY MATTER WHATSOEVER, INCLUDING ALL IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY PAYPAL OR ITS EMPLOYEES OR REPRESENTATIVES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF PAYPAL'S OBLIGATIONS.

The parties acknowledge that the Braintree Payment Service is a computer network based service which may be subject to outages and delay occurrences. As such, PayPal does not guarantee continuous or uninterrupted access to the Braintree Payment Services. Merchant further acknowledges that access to the Braintree website or to the Braintree Payment Services may be restricted for maintenance. PayPal will make reasonable efforts to ensure that Transactions are processed in a timely manner; however, PayPal will not be liable for any interruption, outage, or failure to provide the Braintree Payment Services.

Section 8 - Term and Termination; Dormancy

8.01 Term and Termination

The term of this Agreement shall commence on the Effective Date and shall continue on until terminated as set forth herein. You may terminate this Agreement, without cause and without penalty, by providing PayPal with notice of your intent to terminate, or by ceasing to use the Braintree Payment Services.

PayPal may terminate this Agreement or suspend services to you if any of the following occurs: (1) we are required by the Networks, the Acquirer, or an order from a regulatory body to cease providing services to you; (2) we believe that you have breached this Agreement, or are likely to do so; (3) if we determine that your use of the Braintree Payment Services carries an unacceptable amount of risk, including credit or fraud risk; or (4) any other legal, reputational, or risk-based reason exists, in PayPal's sole discretion. In the event that PayPal must terminate this Agreement, PayPal shall provide you with written notice as soon as reasonably practicable.

After termination by either party as described above, Merchant shall no longer have access to, and shall cease all use of the Braintree Payment Services. Any termination of this Agreement does not relieve Merchant of any obligations to pay any fees, costs, penalties, Chargebacks or any other amounts owed by you to us as provided under this Agreement, whether accrued prior to or after termination.

8.02 Dormancy

If there is no processing activity through your Bank-sponsored Merchant Account(s) for a period of 12 months or longer, PayPal may close such inactive Bank-sponsored Merchant Account(s) and terminate the Braintree Payment Services upon written notice. You will remain liable for all outstanding obligations under this Agreement related to your Bank-sponsored Merchant Account(s) prior to closure.

Section 9 – General Provisions

9.01 Independent Contractors

The relationship of PayPal and Merchant is that of independent contractors. Neither Merchant nor any of its employees, consultants, contractors or agents are agents, employees, partners or joint ventures of PayPal, nor do they have any authority to bind PayPal by contract or otherwise to any obligation. None of such parties will represent anything to the contrary, either expressly, implicitly, by appearance or otherwise.

9.02 Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable for any reason, the remaining provisions not so declared shall nevertheless continue in full force and effect, but shall be construed in a manner so as to effectuate the intent of this Agreement as a whole, notwithstanding such stricken provision or provisions.

9.03 Waiver

No term or provision of this Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any different or subsequent breach.

9.04 Assignment

This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Merchant may not assign this Agreement without the written consent of PayPal. PayPal may assign this Agreement in its sole discretion without the written consent of Merchant.

9.05 Amendment

We may amend this Agreement at any time by posting a revised version of it on our website under the "Legal" section of our website. The revised version will be effective at the time we post it. In addition, if our changes reduce your rights or increase your responsibilities, we will provide you with at least 30 days' prior notice by posting notice under the "Policy Updates" section contained in the "Legal" section of our website. If you do not agree to the updated terms, you can terminate your Agreement by providing us with notice in the manner indicated below in Section 9.09. If you provide us with termination notice within 30 days of the date of update, then your current terms and conditions shall apply during this notice period.

9.06 Entire Agreement

This Agreement sets forth the entire agreement and understanding of the parties hereto in respect to the subject matter contained herein, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, partner, employee or representative of any party hereto. This Agreement shall be binding upon and shall inure only to the benefit of the parties hereto and their respective successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer or shall be deemed to confer upon any persons or entities not parties to this Agreement, any rights or remedies under or by reason of this Agreement.

9.07 Survival

Sections 2 (Fees and Tax), 4 (Liability for Chargebacks, Invalidated Payments and other Liabilities), 5 (Actions We May Take), 6.08 (Confidential Information), 7 (Indemnification, Limitation of Liability, Disclaimer of Warranties), 8 (Term and Termination), 9 (General Provisions), and Exhibit “A” (Definitions), as well as any other terms which by their nature should survive, will survive the termination of this Agreement.

9.08 Communication; Recording Calls; and Availability of Contractual Documents

You consent to receive autodialed or prerecorded calls and text messages from PayPal at any telephone number that you have provided us or that we have otherwise obtained to (i) notify you regarding your account; (ii) collect a debt; (iii) resolve a dispute; (iv) contact you about exclusive offers; or (v) as otherwise necessary to service your account or enforce the Agreement. Standard telephone minute and text charges may apply.

We may share your telephone numbers with our service providers (such as billing or collections companies) who we have contracted with to assist us in pursuing our rights or performing our obligations under the Agreement, our policies, or any other agreement we may have with you. You agree these service providers may also contact you using autodialed or prerecorded calls and text messages, only as authorized by us to carry out the purposes we have identified above, and not for their own purposes.

PayPal may, without further notice or warning and in its discretion, monitor or record telephone conversations you or anyone acting on your behalf has with PayPal or its agents for quality control and training purposes or for its own protection.

If you have a question or complaint relating to the Braintree Payment Services or your Transactions, please contact the PayPal customer support as defined in the “Contact” tab of the Braintree website.

The general terms and conditions for the Braintree Payment Services will be available at all times on www.braintreepayments.com in the “Legal” tab, and/or be made available during signup process as an electronic copy per e-mail. You may request at any time free of charge electronic copy of your contractual documents.

9.09 Notices, Contracting Entity, Governing Law, and Jurisdiction

- a. Contracting Entity. “PayPal,” “Braintree,” “we,” and “our” in this agreement refer to PayPal Canada Co, a Nova Scotia corporation whose principal business address is MaRS Centre, West Tower, 661 University Ave., Suite 506, Toronto, ON M5G 1M1.
- b. Notice to Merchant. Merchant agrees that PayPal may provide notices and disclosures to Merchant by posting them on Braintree’s website, emailing them to Merchant, or sending them to Merchant through postal mail. Notices sent to Merchant by postal mail are considered received by Merchant within three (3) Business Days of the date PayPal sends the notice unless it is returned to PayPal. Disclosures and notices posted on Braintree’s website or emailed shall be considered to be received by you within 24 hours of the time it is posted to our website or emailed to you unless we receive notice that the email was not

delivered. Furthermore, you understand and agree that if PayPal sends you an email but you do not receive it because your primary email address on file is incorrect, out of date, blocked by your service provider, or you are otherwise unable to receive electronic communications, PayPal will be deemed to have provided the communication to you. In addition, PayPal may send Merchant emails, including, but not limited to, those relating to product updates, new features and offers and Merchant hereby consents to such email notification. You also agree that electronic disclosures and notices have the same meaning and effect as if we had provided you with a paper copy.

- c. Notices to PayPal. Notice to PayPal shall be considered valid only if sent by postal mail to PayPal Canada, Attention: Legal Department, MaRS Centre, West Tower, 661 University Ave., Suite 506, Toronto, ON M5G 1M1 , Canada.
- d. Choice of law and jurisdiction. This Agreement shall be subject to the laws of Ontario, and the laws of Canada, each as may be applicable. You agree to irrevocably submit to the non-exclusive jurisdiction of the courts of Ontario for the purpose of any suit, action or other proceeding arising out of this Agreement or your use of the Braintree Payment Services.

EXHIBIT A – Definitions

- **“Acquirer”** means the financial institution that provides acquiring services to Merchant under the terms of the Bank Agreement.
- **“Agreement”** means this Braintree Payment Services Agreement, including all exhibits and other agreements and documents incorporated herein.
- **“Bank Account”** means the bank account that you specify to receive your Payouts.
- **“Bank Agreement”** means the agreement provided by the financial institution that is providing the acquiring services.
- **“Bank-sponsored Merchant Account”** means the merchant account(s) provisioned to Merchant by Acquirer for use as part of the Braintree Payment Services under the terms of the Bank Agreement.
- **“Business Day”** means a day where banks are generally open in Canada.
- **“Card Information”** is defined in Section 8.02 above.
- **“Chargeback”** means a challenge to a payment that a buyer files directly with his or her credit or debit card issuer.
- **“Confidential Information”** is defined in Section 6.09 above.
- **“Control Panel”** is the user interface for the Braintree Payment Services.
- **“Customer(s)”** means the customer of the Merchant.
- **“Customer Data”** means all information, including personal data, that (i) Customer provides to Merchant and Merchant passes on to PayPal through the use by Merchant of the

Braintree Payment Services and (ii) PayPal collects from the Customer's device and browser through use by Merchant of the Braintree Payment Services.

- **"Data Recipient"** is defined in Section 8.02 above.
- **"Fraud Protection Tools"** is defined in Section 1.01(c) above.
- **"Hyperwallet"** means Hyperwallet Systems Inc. and its affiliates.
- **"Hyperwallet Customer Funds Account"** means a pooled Hyperwallet funds account designated for the benefit of merchants and segregated from Hyperwallet's proprietary operating accounts where your funds are held in trust and in accordance with the Hyperwallet terms of service.
- **"Intellectual Property"** means all of the following owned by a party: (a) trademarks and service marks (registered and unregistered) and trade names, and goodwill associated therewith; (b) patents, patentable inventions, computer programs, and software; (c) databases; (d) trade secrets and the right to limit the use or disclosure thereof; (e) copyrights in all works, including software programs; and (f) domain names.
- **"Intellectual Property Rights"** means the rights owned by a party in its Intellectual Property.
- **"Invalidated Payment"** is defined in Section 4(a) above.
- **"Letter of Credit"** is defined in Section 5.05 above.
- **"Letter of Credit Amount"** is defined in Section 5.05 above.
- **"Merchant"** or "you" means the entity and/or individual who enters into this Agreement.
- **"Network"** or "Networks" means, collectively, Visa, Mastercard, Discover, American Express, any ATM or debit network, and the other card network organizations.
- **"Network PCI-DSS Requirements"** is defined in Section 6.02 above.
- **"Network Rules"** is defined in Section 3.01(c) above.
- **"Payout"** means the amount due to you from your Transaction minus our fees and any Refunds, Chargebacks, Reversals, set-offs, recoupments or other amounts due to PayPal.
- **"Reversal"** means any payment that PayPal reverses to your customer.
- **"Refund"** means a refund issued by you through the Braintree Control Panel or through your API access.
- **"Reserve"** means an amount or percentage of your Payouts that we instruct Acquirer to hold in order to protect against the risk of Reversals, Chargebacks, or any other risk, exposure and/or potential liability to us related to your use of the Braintree Payment Services.

- **“Restricted Activities”** means any breaches of our Acceptable Use Policy and any activity specified in Section 3.01 above.
- **“Software”** is defined in Section 6.04 above.
- **“Trademark(s)”** is defined in Section 6.05 above.
- **“Transaction”** means the payment of funds between you and a Customer related to the sale of goods and/or services, or charitable donations.