



**ACCORD D DESJARDINS
FINANCING SERVICE AGREEMENT**

Accord *D*



 **Desjardins**
Business

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ACCORD D DESJARDINS FINANCING SERVICE AGREEMENT BETWEEN:

THE FÉDÉRATION DES CAISSES DESJARDINS DU QUÉBEC (THE "**FEDERATION**") AND THE MERCHANT AS INDICATED ON ITS DESJARDINS PAYMENT AND FINANCING SOLUTIONS APPLICATION FORM AND ON ANY SUBSEQUENT APPLICATION WHEN REQUESTING ADDITIONNAL DESJARDNS PAYMENT SERVICES ("THE **MERCHANT**"). IT BEING UNDERSTOOD THAT THE MERCHANT HAS ENROLLED TO THE FEDERATION'S PAYMENT SERVICES, AND THAT ENROLMENT IN THESE PAYMENT SERVICES IS A PREREQUISITE FOR BENEFITTING FROM ACCORD D FINANCING SERVICES, THE PARTIES AGREE TO THE FOLLOWING:

1. ACCEPTANCE OF USER TERMS AND CONDITIONS

WHEN THE MERCHANT FIRST USES OR FIRST ALLOWS THE USE OF THE ACCORD D DESJARDINS FINANCING SERVICE THAT IT HAS APPLIED FOR ON ITS APPLICATION FORM OR ON ANY SUBSEQUENT APPLICATION FOR ANY DESJARDINS PAYMENT SERVICE, IT AGREES AND UNDERTAKES TO COMPLY WITH EACH AND EVERY TERM AND CONDITION OF USE SET OUT IN THIS AGREEMENT AND GOVERNING THE ACCORD D DESJARDINS FINANCING SERVICE.

THE MERCHANT AGREES THAT IT SHALL NOT ENTER INTO ANY OTHER AGREEMENT WITH A THIRD PARTY HAVING THE SAME GOAL OR PURPOSE AS THE ACCORD D DESJARDINS FINANCING SERVICE, EXCEPT AS AUTHORIZED IN WRITING BY THE FEDERATION.

ANY MERCHANT ASSOCIATED WITH A BANNER, ASSOCIATION OR GROUP THAT NEGOTIATED A SPECIFIC AND BINDING AGREEMENT WITH THE FEDERATION IS ASKED TO CONTACT THE FRANCHISOR, ASSOCIATION OR HEAD OFFICE OF THE GROUP TO WHICH IT BELONGS TO OBTAIN A COPY OF THAT AGREEMENT AND EXAMINE THE TERMS AND CONDITIONS THEREOF.

2. DEFINITIONS

The terms and expressions defined in this Agreement have the same meaning that was given to them in the Desjardins Payment Services Agreement, except those terms and expressions below, which have the meaning given to them in this document:

- 2.1 “Accord D Desjardins Financing Service”** means the financing service that allows the Merchant’s customers to pay for their purchase using a Desjardins Credit Card using one of four financing methods: Deferred Payment Financing, Equal Instalment Multiple Purchase Financing, Equal Instalment Financing and Deferred Equal Payment Financing;
- 2.2 “Agreement”** means this Agreement governing the Accord D Desjardins Financing Service and the Application Form, as well as any amendments that may be made to them from time to time;
- 2.3 “Application Form”** means the Desjardins Payment and Financing Solutions application form filled out by the Merchant when it, without limitation, applies for one or more Desjardins payment and Accord D financing services, subsequently adds a service, or applies for one or more Desjardins payment and Accord D financing services by means of a digitally recorded application;
- 2.4 “Deferred Equal Instalment Financing”** means the financing method that allows the Cardholder of a Desjardins Credit Card to defer the payment of their purchase to a later date and, at the end of the set deferral period, to pay for their purchase through equal and consecutive payments under specific payment terms;
- 2.5 “Deferred Payment Financing”** means the financing method which allows the Cardholder of a Desjardins Credit Card to defer the payment of their purchase to a later date under specific payment terms;
- 2.6 “Desjardins Credit Card”** means a Visa, Mastercard or private-label credit card issued by the Federation;
- 2.7 “Desjardins Payment Services Agreement”** means the agreement reached between the Merchant and the Federation, governing the Desjardins Payment Services that the Merchant requested in its Application Form;
- 2.8 “Equal Instalment Financing”** means the financing method that allows the Cardholder of a Desjardins Credit Card to distribute the price of their purchase into a number of equal instalments and under specific payment terms;
- 2.9 “Equal Instalment Multiple Purchase Financing”** means the financing method that allows the Cardholder of a Desjardins Credit Card to make multiple purchases of goods or services throughout a period by deferring payment until the expiry of said period, after which payments are spread out in a specific number of instalments under specific payment terms;
- 2.10 “Rate Schedule”** means any rate schedule that may be attached to the Application Form, as well as any related document that may be provided to the Merchant at the time of its application, when opening its Merchant Account or thereafter;
- 2.11 “Web Application”** means a software application available via a Web browser that the Merchant can use to access various tools made available to it by the Federation and to access services, Statements or account statements.

3. ACCORD D DESJARDINS FINANCING SERVICE

3.1 Eligibility

To be entitled to the Accord D Desjardins Financing Service, the Merchant must meet the following eligibility criteria:

3.1.1 It must have enrolled to the Desjardins Payment Services provided by the Federation (POS terminal);

3.1.2 Have a brick-and-mortar location, which means having a physical establishment clearly identified with its name, open to the public, for commercial purposes, unless the Merchant is:

- A) A APCHQ member or a member of the Desjardins Privilege Offer (formerly the Réno-Maître network); or
- B) A campground owner who resides on the premises

3.1.3 It must not solicit customers, in person, door-to-door, by telephone, by mail or by internet, outside of the location where the Merchant's business is established, in order to sell them a product or service. The Merchant must not be an "itinerant merchant" within the meaning of the term in the *Consumer Protection Act* (RLRQ Chapter P-40.1), as may be modified or amended from time to time, or in other legislation applicable outside Quebec defining the concept of "itinerant merchant" or any similar concept. The Merchant may, however, visit the customer upon the customer's request when the customer is ready to purchase the Merchant's products or services (e.g., appliance repair).

The Federation reserves the right to terminate without delay this Agreement in whole or in part if the Merchant no longer meets one of these eligibility criteria.

3.2 PROCEDURES

The Merchant undertakes to follow the procedures pertaining to the four financing methods offered as part of the Accord D Desjardins Financing Service, namely Deferred Payment Financing, Equal Instalment Financing, Deferred Equal Instalment Financing and Multiple Purchase Equal Instalment Financing. The Merchant acknowledges having received initial training in respect thereof and having received all required documentation describing the appropriate procedures to be followed.

3.3 MERCHANT OBLIGATIONS

3.3.1 The Merchant shall send to the Federation, for each of its customers that do not own a Desjardins Credit Card, an application for financing and for a Desjardins Credit Card ("**Application**" for the purposes of this section).

3.3.2 Processing: If the Merchant sends Applications and point-of-sale transaction slips by fax and/or online application, they **agree to securely destroy any copies**, unless otherwise required by laws or regulations to archive them, in which case the Applications and transaction slips must be destroyed when that obligation ends.

3.3.3 Responsibility: A Merchant that sends its customers' Applications shall assume full responsibility for delivering the original of any Invoices requested by the Federation. Accordingly, if the Federation does not receive said Invoices, the Merchant agrees to compensate the Federation for any losses it may incur.

3.3.4 Proof of delivery: The Merchant shall provide proof of delivery for the goods that appear on all Invoices, at the Federation's request.

3.3.5 The Merchant undertakes to give the Federation thirty (30) days' prior written notice of any change in its name, address (street number or electronic address), vocation or the products that it sells.

3.3.6 Other conditions: In addition to the terms set forth in this Agreement, and notwithstanding any provision to the contrary, the Merchant undertakes to respect all of the specific conditions and exclusions applicable to the industry (or industries) in which it operates, which are listed in detail in the Appendix to this Agreement.

3.4 OVERBILLING OF MERCHANDISE

Upon presentation of a Desjardins Credit Card by the Cardholder or following an Application for financing and issuance of a Desjardins Credit Card, the Merchant undertakes:

3.4.1 to sell goods or render services to the Cardholder at prices not exceeding the prices marked or advertised by the Merchant for such goods or services;

3.4.2 to sell the goods or render services agreed upon to the Cardholder;

3.4.3 not to claim commissions or other charges for the use of the Accord D Desjardins Financing Service.

3.5 VALIDITY OF INFORMATION

3.5.1 Notwithstanding any provision to the contrary in this Agreement and the Desjardins Payment Services Agreement, the Merchant shall act as the Federation's agent to the extent required by law, including the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, for the purposes of verifying the identity of the Merchant's customers who are not Cardholders of Desjardins Credit Cards, as well as for any other purpose provided for by law. The Merchant's obligations as the Federation's agent pursuant to Paragraph 3.5.1 are more fully detailed in the Guides and Instructions, including further clarification on the identification documents to be examined or verified and the information to be sent to the Federation.

3.5.2 The Merchant is responsible for complying with the customer identification procedure and for the accuracy of the information collected in accordance with Paragraph 3.5.1 above, and for the accuracy of any other information provided by the customer on the application for financing under the Accord D Desjardins Financing Service, including, where applicable, for the issuance of a Desjardins Credit Card. In this regard, the Merchant shall be liable for any damage incurred by the Federation in connection with the information it provides.

3.6 MERCHANT'S WEBSITE

If the Merchant chooses to offer its customers the Accord D Desjardins Financing Service through its website, the following stipulations apply:

3.6.1 The Merchant undertakes to comply with all laws applicable in the provinces where it does business, including but not limited to, applicable consumer protection laws. Without limiting the generality of the foregoing, the Merchant agrees to comply with the *Consumer Protection Act* (Quebec) (RLRQ, chapter P-40.1), including its provisions respecting distance contracts, as well as any other similar law applicable outside of Quebec defining the notion of "distance contract" or any similar notion;

3.6.2 The Merchant acknowledges that any Transaction pertaining to an order made over the internet, even if the said Transaction has been authorized, constitutes a Transaction Not Read Electronically for the purposes of this Agreement. Therefore, the provisions of Subsection 3.3 of the Desjardins Payment Services Agreement shall apply to all such Transactions.

3.6.3 The Merchant undertakes to obtain a Secure Payment Gateway in accordance with Section 4 of the Desjardins Payment Services Agreement;

3.6.4 The Merchant undertakes to notify the Federation in writing thirty (30) days before making any changes to its website relating to the Accord D Desjardins Financing Service and, where applicable, it shall submit to the certification process required by the Federation. The Federation reserves the right, after notifying the Merchant, to verify that the Merchant's operations comply with the Federation's standards and specifications. The Merchant also agrees to notify the Federation within the same timeframe if it changes its name or email address, or changes its purpose or the products or services it sells.

3.7 APPLICATION OF THE PROVISIONS OF SECTION 3 OF THE DESJARDINS PAYMENT SERVICES AGREEMENT

The Accord D Desjardins Financing Service and any related Transactions are subject to the provisions of Section 3 of the Desjardins Payment Services Agreement where applicable, including Subsection 3.4.

4. MERCHANT ACCOUNT

4.1 To benefit from the Accord D Desjardins Financing Service, the Merchant must have and maintain an account at the Canadian financial institution it identified when the Application Form was completed. The Merchant may also hold other accounts for the same purposes, which shall then be deemed to form part of a single Merchant Account for the purposes of this Agreement. However, the Merchant must have a Merchant Account for each of its addresses.

4.2 The Merchant shall continue to be subject to the conditions and fees prescribed by its depository financial institution in respect of the Merchant Account. The Merchant shall give the Federation fifteen (15) days' prior written notice of any change of account. Said notice shall indicate the new account number and, where applicable, the name of the new financial institution.

4.3 The Merchant hereby asks, and therefore authorizes the Federation, to credit or debit, as the case may be, the total amount of any Transaction to or from its Merchant Account. The Merchant acknowledges that it is the duty of the depository financial institution to credit said account the moment it receives the funds sent by the Federation.

5. FEES

The Merchant acknowledges having received the Rate Schedule and any related document establishing the fees payable for the Accord D Desjardins Financing Service, having read and understood the said schedule and documents, and states that it is satisfied therewith. Therefore, the Merchant undertakes for the term of this Agreement:

5.1 to pay the Federation, for each Place of Business and for each merchant number, the applicable fees related to the Accord D Desjardins Financing Service;

5.2 to pay the Federation's fees or those of its authorized representatives or external auditors resulting from the exercise of its audit right provided for in Section 9 of this Agreement, in the event that the audit reveals a breach by the Merchant of its obligations;

The fees set out in the Rate Schedule may be changed in accordance with Subsection 14.1 hereof.

6. PAYMENT AND INDEBTEDNESS

6.1 The following amounts chargeable against the Merchant constitute a debt payable on demand to the Federation and, as such, may be debited from its Merchant Account by the Federation without prior notice or deducted from the amounts of the Invoices remitted by the Merchant to the Federation:

- A) any amount owing by the Merchant under this Agreement or the Rate Schedule, or arising from the application thereof;
- B) all the fees payable under this Agreement, including, but not limited to, those set out in Section 5;
- C) all adjustments payable by the Merchant, as well as the amount of any applicable tax.

Where the Merchant does not have sufficient funds in its Merchant Account, it agrees to pay the amount remaining unpaid to the Federation upon request.

6.2 The amounts set out in Subsections 5.1 and 6.1 may be debited from the Merchant Account on the date indicated in each monthly statement sent to the Merchant, regardless of the manner in which such statement is transmitted or when the amounts become payable to the Federation by the Merchant under this Agreement. These debits shall vary depending on what amounts the Merchant owes to the Federation. The Merchant agrees that the financial institution where the Merchant Account is held shall not be bound to verify the payment deducted in accordance with Subsection 6. The Merchant acknowledges that the debit authorization granted to the Federation under this Section 6 is tantamount to granting that authorization to the financial institution.

6.3 The Merchant declares that it understands and accepts the terms and conditions of the pre-authorized debit arrangement it is agreeing to hereunder. As indicated in Subsection 6.1, the Merchant hereby waives the right to receive written notice before the first and any subsequent debit is made from its Merchant Account. The Merchant also waives the right to receive any prior notice resulting from amendments it may make to the debit authorization provided for in Section 6, more specifically any changes related to its Merchant Account. For any change of financial institution, folio number, account number or information on the identity of the Merchant, the Merchant shall give the Federation no less than 15 days' prior written notice. Subject to the other provisions of this Agreement, the Merchant may at any time revoke the debit authorization granted under this Section 6 upon 30 days' prior written notice. The Merchant can obtain a sample cancellation form, and other information on its right to cancel this preauthorized debit arrangement, by contacting the appropriate Federation customer service department (see contact information at the end of this Agreement), or at www.payments.ca.

6.4 The Merchant shall have certain rights of recourse if a debit does not comply with the pre-authorized debit arrangement set forth in Section 6. For example, the Merchant shall have the right to be reimbursed for any debit made that is unauthorized or incompatible with the said arrangement. The financial institution shall reimburse the Merchant, on behalf of the Federation, the amounts that were erroneously debited from its Merchant Account within ten (10) business days following the contested withdrawal, provided the reimbursement is requested for an eligible reason. A request to that effect shall be presented to the Merchant's financial institution using the procedure the latter may indicate. Any request made after this timeframe shall be presented directly to the Federation. The Merchant agrees to allow any information contained in this Agreement to be disclosed to the financial institution, provided that the said information disclosure is directly related to and necessary for the proper implementation of the applicable pre-authorized debit rules. For information on pre-authorized debits, the Merchant may contact the appropriate customer service department of the Federation whose contact information is given at the end of this Agreement.

7. LIABILITY AND INDEMNIFICATION

7.1 LIMITATION OF LIABILITY

7.1.1 The Federation shall not be liable for any of the following:

- A)** indirect, special, consequential, punitive or exemplary damages incurred by the Merchant or by a third party as a result of this Agreement or the use of the Accord D Desjardins Financing Services by the Merchant;
- B)** claims, losses, fees or damages, including a shortfall or loss of profits (referred to as "**Damages**" in this section), resulting from the interruption or malfunction of the Accord D Desjardins Financing Service, for any reason whatsoever, including but not limited to a cause that is beyond its control, or a strike or lock-out;
- C)** Damages resulting from the use, the failure to use, or errors made in connection with the use of the Accord D Desjardins Financing Service, for any reason whatsoever;
- D)** Damages resulting from any advertising, promotion or use of legal notes provided by the Federation or of Intellectual Property Rights that is in breach of Section 11 of this Agreement;
- E)** Damages arising from the inclusion or omission of the legal notes or any other particulars in any advertising, where the said notes or other particulars are for a purpose other than that of the notes that may be provided by the Federation;

7.1.2 In addition to the specific indemnification obligations stipulated in this Agreement, the Merchant agrees to the following:

- A)** hold the Federation harmless against any suit, third party claim or damages of any nature whatsoever related to the failure by the Merchant to comply with this Agreement, including the Guides and Instructions, and to use the Accord D Desjardins Financing Service in accordance with the conditions stipulated herein, and to indemnify the Federation for all damages and interest it may sustain and for all extrajudicial costs it may incur in this respect
- B)** hold the Federation harmless against any suit or claim of a third party that may sustain injuries or property damage not attributable to the Federation's negligence but resulting from the Accord D Desjardins Financing Service, and to reimburse the Federation for the damages incurred, as well as for the legal fees and extrajudicial costs that it has incurred in this respect.

7.2 The Federation does not warrant that the Accord D Desjardins Financing Service will function without error or interruption. Similarly, the Federation grants no warranty except as stipulated in this Agreement, and such warranties supersede any other warranty, whether expressed or implied, including any legal warranty.

7.3 The Merchant acknowledges and agrees that any conflict concerning the quality of the services or goods provided by the Merchant following a Transaction made through the Accord D Desjardins Financing Service, only concerns the Merchant and the customer involved without in any way involving the Federation.

8. CONFIDENTIALITY AND INFORMATION SECURITY

8.1.1 The Merchant agrees to keep confidential all information about its customers, Cardholders and Transactions (including, without limitation, Invoices, Drafts, credit notes, customer contracts, rental contracts, carbon copy papers, etc.), to use such information solely for the purposes of carrying out a Transaction, and to limit access thereto to selected members of its personnel whose duties require that they have access to such information. Without limiting the generality of the foregoing, the Merchant agrees:

- A) not to disclose or give to any third party, the names or numbers shown on a Desjardins Credit Card or on any other document;
- B) not to make lists of the Cardholders of Desjardins Credit Cards or lists of information on the Transactions;
- C) to keep confidential any other information disclosed to the Merchant pursuant to this Agreement.

8.1.2 The Merchant agrees to the following with respect to the storage of information referred to in Paragraph 8.1.1:

- A) store in a safe and secure manner all documents or records, regardless of their format, containing names of Cardholders of Desjardins Credit Cards, account numbers or other Transaction information.

8.2 MERCHANT'S FAILURE TO COMPLY

In addition to the other rights of the Federation provided in this Agreement, in the event the Merchant fails to comply with its obligations under Section 8:

8.2.1 the Federation may, without prior notice and at its sole discretion, interrupt the Accord D Desjardins Financing Service;

8.2.2 the Merchant shall be liable and agrees to indemnify and hold harmless the Federation against any damages, penalty, fine, claim and other expenses the Federation might incur, such as legal, extrajudicial, auditing, investigation, monitoring and/or re issuing fees, as the case may be, resulting from such a breach on the part of the Merchant.

8.3 THE FEDERATION'S CONFIDENTIALITY OBLIGATIONS

The Federation agrees that any information it might obtain hereunder relating to fund movements within the Merchant's Place of Business shall remain confidential, unless written instructions to the contrary are received from the Merchant. Section 8 will remain in force even if this Agreement is terminated, regardless of the reason for such termination.

9. AUDIT RIGHT

9.1 The Merchant agrees to allow the Federation to inspect its premises and Computer Systems to verify that (i) the files relating to Transactions, including the Drafts, Invoices and Statements, are maintained in compliance with the Merchant obligations set forth in this Agreement; (ii) the information referred to in Section 8 is processed and stored in a confidential and secure manner in accordance with this Agreement; and (iii) the Merchant complies with its other obligations under this Agreement.

9.2 The Merchant agrees to cooperate with the Federation in the exercise of its audit rights, particularly regarding information on the Transactions.

9.3 As part of the inspections referred to in this Agreement, specifically in Subsections 9.1 and 9.2, and upon any renewal of the service or program provided for herein, the Merchant agrees to provide all financial statements as well as any financial information that may concern the Merchant or its subsidiaries, its parent corporation or any other member of its group that the Federation may request. The Merchant specifically agrees to take any measure required to provide the said documents within a commercially reasonable timeframe.

10. AUTHORIZATION TO COLLECT INFORMATION

The Merchant agrees that the Federation may collect at any time and from any person, all commercial and credit information it deems necessary regarding its solvency or its commercial activities, and said persons are hereby authorized to disclose such information to the Federation. The Federation is authorized to disclose the information collected to any person with whom the Merchant maintains a business relationship as well as any credit-reporting agency or information agent.

11. INTELLECTUAL PROPERTY

The Merchant agrees that all the Intellectual Property Rights, as well as any other right, title and interest in respect of the concepts, techniques, ideas, information and equipment/material, regardless of the medium (including images or data) provided to the Merchant by the Federation shall at all times remain the exclusive property of the Federation or of the suppliers with which the Federation has signed an agreement, and that the use of these concepts, techniques, ideas, information and equipment/material, regardless of the medium (including images or data) is subject to the guidelines and instructions of the Federation, or of the suppliers with which the Federation has signed an agreement.

11.1 The Merchant undertakes to obtain prior written approval from the Federation before using any content covered by Intellectual Property Rights belonging to the Federation, such as logos, brands, or texts prepared by the Federation, including on any promotional or advertising materials. The Merchant undertakes to comply with the directives given to it by the Federation with respect to the use of such content, including but not limited to the directives contained in the Guides and Instructions, and to cease any such use upon written request from the Federation. Without limiting the generality of the foregoing, the Merchant undertakes to obtain prior written approval from the Federation before using any of the materials featuring the name of the Federation or any of its trademarks.

11.2 When the Federation approves material pursuant to Subsection 11.1, its approval is limited to the appropriate manner of presenting the visibility elements described in this section and does not pertain to the legality of the content of the material, such as with respect to the applicable law covering advertising materials, which remains the entire responsibility of the Merchant. The Merchant alone shall be responsible for the legality of the contents of advertising associated with its products and services. The Merchant understands and accepts that under this Agreement, the Federation does not provide the Merchant legal advice with respect to the legality of the content of any of the Merchant's advertising, including advertising requiring the approval of the Federation under Subsection 11.1.

12. ARBITRATION

12.1 Subject to Subsection 12.3, any dispute between the Federation and the Merchant that they are unable to resolve shall be confidentially and definitively resolved by arbitration involving a single arbitrator in accordance with the procedure set out in the Code of Civil Procedure (Quebec), it being understood that such arbitration shall be held in Montreal, unless the Federation and the Merchant decide otherwise.

12.2 Any decision rendered by an arbitrator in accordance with this section shall:

- A) be final and binding between the Federation and the Merchant;
- B) not be subject to any other proceeding before the courts of law other than those required for the homologation (certification) and execution of the decision by a competent court with jurisdiction over the matter; and
- C) not be disclosed to third parties unless such disclosure is required by the applicable law.

The costs of arbitration, including professional fees and disbursements, shall be awarded by the arbitrator as they see fit in the circumstances.

12.3 Notwithstanding Subsection 12.1, the Federation shall be entitled to apply to a court of law respecting the exercise of any extraordinary recourse, seizure before judgment or other recourse based on the fraud or deceitful manoeuvres of the Merchant, respecting the exercise of a property right by the Federation or respecting the recovery of any amount owing to the Federation by the Merchant, including the amount identified in Subsection 6.1.

13. TERM AND TERMINATION

13.1 TERM AND RENEWAL

13.1.1 This Agreement takes effect on the date on which the Merchant first uses or allows the use of the Accord D Desjardins Financing Service. It has an initial term of one (1) year and shall thereafter be automatically renewed for successive terms of six (6) months, subject to the provisions governing termination.

13.1.2 The Merchant may terminate this Agreement by sending the Federation notice to this effect before the end of the initial term or subsequent renewal.

13.2 TERMINATION WITHOUT BREACH

Notwithstanding Subsection 13.1:

13.2.1 the Federation may terminate this Agreement at any time upon giving sixty (60) days' prior written notice to the Merchant, notwithstanding Section 2126 of the *Civil Code of Québec*. In this case, the Federation is only required to repay any advances it has received in excess of what it has earned.

13.2.2 the Merchant may terminate this Agreement at any time, with no termination fee.

13.2.3 this Agreement will automatically terminate at the same time that the Desjardins Payment Services Agreement between the Federation and the Merchant is terminated, notwithstanding Section 2126 of the *Civil Code of Québec*.

13.3 BREACH OF AGREEMENT

A party will be deemed in breach of this Agreement upon the occurrence of any of the following events, namely if the party:

13.3.1 fails to abide by the terms and conditions of this Agreement.

13.3.2 becomes unable to meet its obligations as they generally become due, or ceases paying its current obligations in the ordinary course of business as they generally become due.

13.3.3 becomes insolvent or bankrupt, makes an assignment of its property within the meaning of the Bankruptcy and Insolvency Act, files a notice of intent or a proposal or resorts to any law pertaining to arrangements with creditors such as the Companies' Creditors Arrangement Act, in a context where proceedings to liquidate the company are undertaken.

13.4 BREACH SPECIFIC TO THE MERCHANT

The Merchant shall also be deemed in breach of this Agreement upon detection by the Federation: (i) of the Merchant's fraudulent conduct or deceitful manoeuvring; or (ii) that the Merchant's property is the subject of seizure, administrative garnishment by a federal or provincial tax authority, registration of a legal hypothec, prior notice of exercise of a hypothecary right, or any legal proceeding whatsoever that jeopardize the rights of the Merchant or the Federation, unless the Merchant elects to challenge the seizure, administrative garnishment, registration of legal hypothec or instituted proceedings, in which case the Merchant must satisfy any request made by the Federation to secure future Transactions made through the Merchant.

13.5 TERMINATION FOR BREACH

13.5.1 In the event of a breach by the Merchant as set out in Subsections 13.3 and 13.4, and subject to any other right of the Federation stipulated herein, the Federation may, without further notice or delay, and notwithstanding Paragraph 13.2.1, terminate this Agreement for all legal purposes.

13.5.2 In the event of a breach by the Federation as set out in Subsection 13.3, the Merchant may terminate this Agreement for all legal upon ten (10) days' prior written notice to the Federation, unless the Federation has remedied such failure prior to expiry of the notice period.

13.6 MERCHANT INACTIVITY

If the Federation observes that no Transaction has been completed through the Desjardins Payment Services for a period of thirty (30) consecutive months, and subject to any other right of the Federation herein, the Federation may, with no further notice or delay and notwithstanding Paragraph 13.2.1, terminate this Agreement for all legal purposes.

13.7 EFFECTS OF TERMINATION

If this Agreement is terminated, the Merchant shall immediately stop using all forms or equipment related to the Accord D Desjardins Financing Service that bear the corporate name or any trademark belonging to the Federation, or on which the corporate name or such marks are reproduced. The Merchant shall return these forms and equipment to the Federation. The Merchant shall also pay the Federation any amounts due for services rendered before the effective date of termination.

14. AMENDMENT

14.1 Notwithstanding any provision of this Agreement, the provisions of this Agreement, the related terms and conditions and the Accord D Desjardins Financing Service can be amended, added, and/or withdrawn at any time by the Federation, by giving the Merchant thirty (30) days' written notice to this effect.

However, this notice does not apply to any amendment to the amounts that may be invoiced to the Merchant with regard to the Accord D Desjardins Financing Service, which shall take effect on the date determined in the written notice provided to the Merchant.

14.2 If the Merchant receives a notice of Amendment in accordance with Subsection 14.1 and fails to notify the Federation in writing before expiry of the said notice that it is terminating the Agreement as provided in Section 17, or continues to pay fees for the Accord D Desjardins Financing Service, the Merchant shall be deemed to have accepted the amendment(s) appearing in the notice sent by the Federation.

14.3 If, however, prior to expiry of the said notice, the Merchant notifies the Federation that it terminates this Agreement, the terms and conditions provided for in Subsections 13.1, 13.2 and 13.3 shall not apply. Any Amendment to this Agreement requested by the Merchant shall be subject to the prior approval of the Federation.

15. GUIDES AND INSTRUCTIONS

15.1 In addition to the specific references in this Agreement, the Federation may, from time to time, issue Guides and Instructions concerning the Merchant's rights and obligations respecting the Accord D Desjardins Financing Service. Subject to an implementation period granted by the Federation, upon receipt, such Guides and Instructions shall be binding on the Merchant.

16. ASSIGNMENT

16.1 This Agreement is binding on the parties and their heirs, successors and assigns, and it may not be assigned by the Merchant without the consent of the Federation.

16.2 The Federation reserves the right to transfer all or part of its rights and obligations provided in this Agreement to a third party, without notice to the Merchant or its authorization. Should the Federation notify the Merchant of such a transfer and a Transaction is subsequently the subject of a service described in this Agreement, the Merchant agrees that the Federation is then discharged from any obligation arising under this Agreement and the Merchant waives any rights it may have against the Federation as of the date of the Transaction.

17. NOTICE

17.1 Any notice to be given hereunder must be delivered by hand or sent by prepaid mail to the Merchant's address mentioned on the Application Form. Notices to the Federation shall be given to the following address, subject to notice to the contrary:

Fédération des caisses Desjardins du Québec Merchant Payment Solutions, 450 Boul. de Maisonneuve Ouest Montreal, Quebec H3A 0H2.

Subject to the terms of Section 13 hereof, notices given by mail are deemed to have been received on the third business day following the date they are mailed.

18. GOVERNING LAW

18.1 This Agreement is governed by the laws in the Province of Quebec and by the federal laws of Canada applicable therein.

19. SEVERABILITY

19.1 Any provision of this Agreement that is declared invalid or unenforceable shall in no way affect the validity or enforceability of the other provisions hereof and shall be deemed severed from this Agreement.

20. ENTIRE AGREEMENT

20.1 Unless otherwise agreed to by the parties, this Agreement, the Application Form and the Rate Schedule constitute the entire and definitive agreement between the parties concerning the Accord D Desjardins Financing Service and supersede any agreement, contract, representation, discussion and all oral or written undertakings reached between the parties prior to the date hereof.

21. WAIVER

21.1 Either party to this Agreement may waive all or part of the benefits granted hereunder or its right to claim a breach or default of the provisions hereunder. No waiver shall be binding upon the waiving party unless it is made in writing.

21.2 The failure or delay by either party to exercise any right, remedy or privilege under this Agreement may not be regarded as a waiver by that party of the exercise of such right, remedy or privilege nor may it be regarded as a waiver of any subsequent breach or default.

TO CONTACT US:

Business Customer Service:

Montreal: 514-397-4450 Toll-free: 1-888-285-0015

Accord* *D

 **Desjardins**
Business

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