

Olive Merchant Services Agreement

Last Updated: April 30, 2021

This Olive Merchant Services Agreement (this “**Agreement**”) is between Olive Group Ltd., a corporation organized under the laws of the Province of Ontario (“**Olive**”), and you (“**Customer**”). Please read this Agreement carefully. By submitting an Order Form on this website, you agree to be bound by the terms of this Agreement and any Order Form you submit. If you have any questions about the Agreement or your Order Form, please contact Olive at merchantservices@oliveld.com.

1. Use Rights and Licences

- a. During the term of this Agreement, Customer may utilize Platform to provide card-linked offers to end user customers (“**End Users**”) pursuant to a non-exclusive, non-transferable, limited right to use the Platform under this Agreement. Olive reserves all rights not expressly granted to Customer under this Agreement.
- b. Customer shall own all right, title and interest in proprietary information and authorized user data provided by or obtained on behalf of Customer for purposes of Customer’s use of the Platform (“**Customer Data**”). Olive shall own all right, title and interest in and to all data (e.g. statistical information in respect of offers) collected or generated by Olive in connection with the operation of the Platform and Customer’s use thereof (“**Usage Data**”), but such Usage Data shall not include account registration information by an End User, and Olive will not disclose any information that is proprietary to Customer.
- c. Customer hereby grants Olive the worldwide right during the Term to use, reproduce, distribute, transmit and make derivatives of the Customer Data solely: (a) in connection with Olive’s provision of the Platform, hosting of Customer Data, including disclosure to a payment network provider (Visa, Mastercard, and other similar payment networks) with whom Olive has a signed agreement to include their data in the Platform, as necessary to identify the Customer as a third-party consumer of the payment network’s data, and (b) for internal analytic, statistical, security, quality control, product development and similar internal purposes. Customer will provide Olive all Customer Data which is necessary to provide the Platform, as applicable.

2. Restrictions. Olive only provides the platform for purposes of making offers and obtaining the appropriate data arising from such offers. The use rights that Olive provides are Customer’s alone - Customer will not allow, directly or indirectly, any use of or transfer any rights in respect of platform to a third party. Customer will guard Customer access credentials to the platform and let Olive know if such credentials are compromised. Customer understands that all aspect of the platform are subject to intellectual property rights, including copyright, held by Olive or its licensors and Customer agrees to not infringe any such intellectual property rights, whether by way of copying, making derivative works from or of the Platform otherwise reverse engineering, decompiling, disassembling, or otherwise attempt to reduce any object code of any of the foregoing to human perceivable form or permit others to do so, or utilizing the Platform to make a competitive solution. Customer agrees to not take any action that disrupts functionality of the platform, including introducing any harmful code or subjecting the platform to stress, penetration, or security testing. Customer is expected to utilize the platform for normal business purposes and not transmit through the Platform unlawful, immoral, libelous, tortious, infringing, defamatory, false, threatening, vulgar, or obscene material or harmful to minors, or send spam or any other form of duplicative and unsolicited messages through the Platform.

3. Representations and Warranties

- a. Each party represents that: (i) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; (ii) it has the power and authority to enter into and perform all of its obligations under this Agreement, and (iii) this Agreement has been signed by its duly authorized representatives who are able to bind their respective companies. The foregoing representations also

apply to each Order Form. Customer further represents, and warrants to Olive that its use of the platform will comply with all applicable laws.

- b. **Warranty Disclaimer.** Olive does not make any warranties, express or implied, statutory or otherwise, regarding the Platform and hereby disclaims any and all express and implied warranties, representations or conditions, including but not limited to any warranties of merchantability, suitability, fitness for a particular purpose and any warranty arising from a course of dealing, non-infringement, usage or trade practice or any representation regarding the results to be achieved from the use of the Platform. Olive does not guarantee that Customer's use of the Platform will be error-free or uninterrupted, or that Olive will correct all service errors. Customer acknowledges that Olive does not control the transfer of data over communications facilities, including the internet, and that the Platform may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Olive is not responsible for any delays, delivery failures, or other damage resulting from such problems or for any issues that arise because of third parties.

Platform may contain links to external websites and information provided on such external websites by third party service providers. Olive shall not be responsible for the contents of any linked website, or any changes or updates to such sites. Customer further agrees that Olive shall not be directly or indirectly responsible or liable for any damage or loss caused or alleged to be caused by or in connection with Customer's use of or reliance on any information, data stream, goods or services available on or through any such linked website or any third party service component.

Customer is solely responsible for results obtained from the use of the Platform and for conclusions drawn therefrom, and Customer acknowledges that Customer is responsible for the selection of the Platform to achieve Customer's intended results. Customer acknowledges that it is solely responsible for deciding to use, accept or reject the output from the Platform. Notwithstanding anything contained herein to the contrary, Olive shall have no liability to Customer, its customers, employees, or any other party for losses arising from or related to the output of the Platform or the results of such output.

4. Intellectual Property Indemnification. Subject to limitations below, Olive shall indemnify defend and hold Customer harmless at Olive's own expense against any action against Customer brought by a third party to the extent the action is based upon a claim that an Olive Offering directly infringes any North American issued patent or copyright, or misappropriates any trade secret recognized under law.

Olive has no obligation with respect to any claim based upon: (i) any violation of the terms herein; (ii) any combination or use of the Platform with other products, equipment, software, or data not supplied or approved in writing by Olive; or (iii) any unauthorized use of the Platform.

This subsection states Olive's entire liability and Customer's sole and exclusive remedy for infringement and misappropriation claims and actions.

5. Customer Indemnification. Subject to the terms of this Section, Customer shall indemnify defend and hold Olive harmless at Customer's own expense in respect of any action against Olive brought by a third party to the extent the action is based upon a claim in relation to data or information provided to Olive by Customer or Customer's use of the Platform.

6. Limitation of Liability. In no event will either party be liable under this agreement under any theory of recovery (including without limitation breach of contract, breach of warranty, negligence, tort, and strict liability) for any indirect, incidental, special, exemplary, consequential (including without limitation loss of data, use, income, profit, or savings) or punitive damages arising out of or in connection with this agreement or any offering, service, or deliverable provided by Olive under this Agreement, even if the responsible party had been advised of the possibility of those types of damages or even if those types of damages were reasonably foreseeable, provided, however the foregoing limitation is inapplicable to damages arising from or as a result of an

infringement or violation of Olive's intellectual property rights (including breach of any license grant or restrictions for any offering or service).

Except to the extent that this limitation is prohibited by applicable law, the total aggregate liability of either party for all claims arising under or related to this Agreement, under any and all theories of liability (including without limitation breach of contract, breach of warranty, negligence, bailment, tort, and strict liability), will not exceed the total amount paid by Customer (excluding implementation fees and reimbursed expenses) for the Olive offering(s), service(s), or deliverable(s) to which the claim(s) relate(s) during the 12 months immediately preceding the date of the most recent claim that gave rise to the liability. Notwithstanding the foregoing (a) Customer's obligation to pay amounts owed to Olive for offerings and services provided by Olive under this Agreement or otherwise (including costs of collection of unpaid amounts) is independent of and not subject to the foregoing limitation; and (b) there is no limitation of liability for damages arising from or as a result of an infringement or violation of Olive's intellectual property rights (including breach of license grant or restrictions).

7. Payment Terms. All fees and charges (other than expenses) will be set forth in the applicable Order Form. Except as otherwise provided, all undisputed fees, charges, and expenses must be paid by EFT/ ACH Payment, wire transfer, bank draft or certified cheque within 30 days of the date of an invoice; any disputes in respect of an underpayment or overcharging may not be disputed by the aggrieved party after 15 days of receipt of applicable invoice or settlement calculations on an applicable statement. All amounts are payable in US Dollars or Canadian Dollars in accordance with the instructions provided in the invoice or other instructions provided by Olive. If Olive does not receive any payment by its due date, Olive may assess a late payment charge on the unpaid amount at the rate of 1.5% per month or the highest rate allowed under applicable law, whichever is less. In addition, Olive may terminate the relevant Order Form, including any licenses granted to Customer therein, or terminate the service concerned, but not until Olive has given Customer written notice, and the amount remains unpaid 30 days after Olive gives the notice. All fees paid hereunder are non-refundable without any right of set-off or deduction. Customer shall reimburse Olive for all reasonable costs related to any proceedings to collect any past-due amounts, including without limitation attorneys' fees and expenses. Olive reserves the right to require Customer to provide a letter of credit in an amount and a form specified by Olive, where Olive deems it necessary.

All charges under this Agreement are stated exclusive of any applicable taxes, and Customer is solely responsible for, and shall pay or reimburse Olive for, all taxes. Olive shall promptly remit to the appropriate tax authority all taxes collected from Customer on account of Customer's tax obligations, if any. If Olive receives a refund of taxes attributable to amounts paid by Customer under this Agreement, Olive shall pay the refunded amount to Customer within 30 days of its receipt.

8. Term. Unless otherwise terminated as specified in this article, the initial term of this Agreement (the "**Initial Term**") will commence on the Effective Date and continue for a period of one year. Thereafter, this Agreement will automatically renew for successive one-year terms (each a "**Renewal Term**" and together with the Initial Term, the "**Term**") unless either party notifies the other in writing at least 30 days prior to the end of the Initial Term or then-current Renewal Term that it elects to have the Agreement expire at the end of that term.

9. Termination. A party may terminate this Agreement by providing written notice to the other party: if the other party has committed a material breach of terms of this Agreement and has failed to remedy the breach within 30 days after receipt of written notice from the non-breaching party identifying the breach and requiring it to be remedied; if the other party ceases to conduct business in the ordinary course or is in any way involved in a bankruptcy or insolvency proceeding in respect of its business; or in the case of customer, customer has committed a material breach of the provisions of this Agreement relating to Olive's intellectual property. In addition, Olive may immediately suspend its performance if Customer (i) violates the terms of any applicable license or license restriction, or (ii) violates any applicable import, export, or re-export laws or regulations.

Upon termination or expiration of any Offering for any reason: (i) all licenses or use rights granted to Customer in respect of the Platform will terminate immediately, as will all Olive support and maintenance obligations, and (ii) all fees and other charges payable pursuant to in this Agreement will become immediately due and payable.

The following provisions of this Agreement will survive expiration or termination of this Agreement: Section 1(b) and (c), Sections 4, 5, 6, 10, 11 and this clause.

10. Governing Law. This Agreement, and any issues arising under or in any way relating to this Agreement and Order Form, will be governed by and construed in accordance with the laws of the Province of Ontario, Canada and the federal laws of Canada therein, without regard to principles of conflicts of law or international law, including without limitation the 1980 United Nations Convention on Contracts for the International Sale of Goods, as revised, which the parties expressly agree does not apply to this Agreement. **Dispute Resolution.** In the event the Parties cannot resolve the dispute within the earlier of twenty (20) days of the origination of the dispute or ten (10) days of the commencement of direct discussions between the executive representatives of the Parties, the dispute may be referred to arbitration pursuant to *Arbitration Act*, 1991, S.O. 1991, c. 17 (Ontario) (the "**Rules**"). There shall be one arbitrator selected in accordance with the Rules. The Parties shall equally share the fees of the arbitrator and the facility fees and the Parties shall each bear their own legal costs and expenses of the arbitration; provided, that the arbitrator shall have the authority to award such fees, costs and expenses in the decision of the arbitrator. The arbitration shall be conducted in English in the City of Toronto. Notwithstanding the foregoing, each Party shall have the right to seek injunctive or other equitable relief that may be related to the breach of confidentiality obligations or violation of the intellectual property rights set forth in this Agreement.

11. Miscellaneous. Independent Contractor. The relationship between the parties is that of independent contractors. This Agreement is not to be construed as creating any partnership, joint venture, agency, or any other form of legal association that would impose liability upon one party for the act or failure to act of the other party. **Publicity.** Subject to Customer's prior written consent (which must not be unreasonably or arbitrarily withheld), Olive may include Customer's name in its marketing and promotional materials regarding the availability of any of its Offerings or services to other Customers. No party otherwise may make public statements in respect of this Agreement. **No Waiver.** No delay or omission by either party in exercising any right under this Agreement will be construed as a waiver of that right. Even if either party waives a breach or default under this Agreement, that party is not deemed to have waived any later or similar breach or default. No waiver will be effective unless in writing and signed by the party waiving the right. **Notices.** Any notices required to be given in writing under this Agreement to Olive must be sent to merchantservices@oliveltd.com. Any notice to be sent to Customer shall be sent to the email address of the primary representative of the Customer on file at Olive. Notices will be deemed given on the actual date of delivery. Either party may change its address, e-mail or facsimile number for notices at any time by giving written notice to the other party as provided in this section. **Assignment; Delegation.** Neither party has the right, without the prior written consent of the other party, to assign or transfer this Agreement, or any part of this Agreement. Except as provided herein, any attempt to assign or transfer all or any part of this Agreement without first obtaining that written consent will be void and of no force or effect. In the event of a change of control (where "control" means ownership of a majority (51% or more) of the outstanding voting common stock of the subject entity) of Customer, or if Customer is merged with, is acquired by, or acquires another entity, or undergoes a reorganization or otherwise acquires the right to process the business of another entity, each such event will be deemed an assignment by Customer subject to this Section, and Customer shall not permit that other entity to use the platform or process any data from that entity through the platform (either combined with Customer's data or as a separate portfolio), or otherwise make any expanded use of Platform, service, or deliverable provided by Olive as a result of that event unless and until Olive provides its written consent. Notwithstanding the foregoing, Olive has the right to assign this Agreement to any Olive Affiliate (as defined under the *Canadian Business Corporation Act*) or by merger, reorganization, change of control, consolidation, or sale of all or substantially all the assets of Olive or the applicable division or line of business, provided Olive must require the Olive Affiliate or controlling entity to adhere to all obligations imposed by this Agreement upon Olive with respect to that data and other information. **Force Majeure.** Notwithstanding anything to the contrary in this Agreement, except for Customer's obligations to pay amounts due under this Agreement, neither party will be deemed to be in default of any provision of this Agreement for

any delay, error, failure, or interruption of performance due to any act of God, terrorism, war, insurrection, riot, boycott, strike, or other labor or civil disturbance, interruption of power service, interruption of communications services, problems with the Internet, epidemic, act of any other person not under the control or direction of either party, or other similar cause. The party subject to any of the foregoing causes shall give the other party reasonable written notification of any resulting material or indefinite delay. **No Third Party Beneficiaries.** Nothing in this Agreement is to be deemed to create any right or benefit in any person not a party to this Agreement. **Article and Section Headings.** The article and section headings in this Agreement are for reference only, and do not form part of this Agreement. **Interpretations.** In this Agreement, words importing the singular number only include the plural and vice versa and words importing any gender includes all genders. The term "including" means "including without limiting the generality of the foregoing", and "shall" and "will" means "must" and not "may". **Construction; Severability.** This Agreement is not to be more strongly construed against either party, regardless of who is more responsible for its preparation. If any provision of this Agreement is held to be unenforceable, unlawful, or invalid in any respect, then that provision will be deemed ineffective only to the extent of the illegality or invalidity, without invalidating the remainder of that provision or any of the remaining provisions of this Agreement. **Entire Agreement.** This Agreement represents the complete agreement of the parties and supersedes all prior or contemporaneous agreements, proposals, understandings, representations, conditions, and communications (oral or written), as well as the terms of all existing or future purchase orders and acknowledgments. Any other terms, conditions, supplements, modifications, or amendments to this Agreement will not be binding upon either party unless expressly set forth in a writing signed by authorized representatives of Customer and Olive. In the case of any conflict between the provisions of this Agreement and an order form, with respect to the subject matter of that order form, the provisions of the order form control. **Counterparts.** This Agreement may be executed on separate counterparts or signature pages, which will be considered the same as if a single document had been executed.