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## Treasury Services Master Agreement

This Treasury Services Master Agreement (the "**Master Agreement**") and any applicable Schedules (the Master Agreement and any applicable Schedules are together referred to as the "**Agreement**") sets out the terms and conditions under which Bank of Montreal ("**BMO**") will provide a client (the "**Client**") with the service(s) (the "**Service(s)**") indicated on the Treasury Services Selection Agreement executed by the Client (the "**Selection Agreement**") or as may be selected by the Client in accordance with Section 1.1 below. Any reference in any existing or future agreement between Client and Bank to a "Cash Management Services Master Agreement" or any other prior services agreement for treasury and payment solutions products and services shall be deemed to be a reference to this Master Agreement.

In consideration of the mutual promises herein, the Client agrees as follows:

### 1. Services

- 1.1. *Selection of Services.* Absent signing the Selection Agreement, enrolling on BMO's website (where available) (the "**Platform**") or the Client's first use of a Service indicates the Client's acknowledgement and agreement to these terms and conditions.
- 1.2. *Changes to Services.* If BMO modifies or discontinues a Service, BMO will notify the Client either by mail, electronic notice or a message posted on an appropriate part of the Platform.

### 2. Governing Agreements and Documents

- 2.1. *Documents Read Together.* There are several agreements and documents that need to be read together. The Client's use of the Services will be in accordance with the Agreement, the account operating agreements or similar document(s) governing the Client's bank accounts, implementation or designation forms, user guides, other instructions including any agent authorization documentation, operating manuals, descriptions and instructions BMO provides in connection with any Service (collectively "**User Documentation**") and security procedures, each as may be amended or supplemented from time to time.

### 3. Obligations and Acknowledgements

- 3.1. *Binding Instructions.* BMO will consider any access to the Services purporting to be by the Client to be duly authorized by the Client. All information, orders, entries and other instructions communicated to BMO by the Client or on the Client's behalf by agents or representatives or which the Client or its agents or representatives receive through the Services in compliance with all procedures BMO requires will be binding on the Client. The Client confirms that it grants authority to such agents or representatives to legally bind the Client using such Services. BMO is not required to verify the bona fides of transactions or the actual identity of users.
- 3.2. *Compliance with Privacy Legislation.* BMO complies with applicable privacy legislation, including the Personal Information Protection and Electronic Documents Act (Canada). BMO's privacy code is posted on the Platform. The Client will ensure that all information provided to BMO in connection with any Service is provided in accordance with all legislation in respect of privacy and personal information that is applicable to the Client.



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- 3.3. *Accurate Information.* The Client will ensure that all information provided to BMO is complete, accurate and up-to-date. Except as otherwise agreed to in writing by BMO, BMO has no obligation to verify any information the Client provides or that is provided on the Client's behalf, and BMO is entitled to rely upon such information.
- 3.4. *Timing.* Unless BMO specifies otherwise, the Client will ensure that all instructions and notices given to BMO are received in sufficient time to permit a reasonable opportunity to deal with them. BMO is required to comply with payment system rules and regulations on clearing and other matters that may prevent BMO from complying with the Client's instructions for payments or funds transfers if the instructions are not received within time frames required by such rules and regulations.
- 3.5. *Compliance with Applicable Law.* In connection with the delivery and use of the Services, BMO along with the Client will abide by all applicable statutes, rules, regulations, orders, treaties or other requirements having the force of law, including the rules and regulations of the Canadian Payments Association, as they may be amended or replaced from time to time (the "**CPA Rules**") (collectively, "**Applicable Law**"). The Client will comply with Canada's Anti-Spam Legislation (CASL) when initiating electronic messages to third parties using the Services. The Client represents and warrants that the entering into and enforcement of the Agreement will not violate any Applicable Law, resolution or other restrictions to which it may be subject and that all terms of the Agreement may be enforced against the Client.
- 3.6. *Use of Branch of Account.* In the event that Services are not available by the usual channels, the Client may direct instructions to the Client's branch of account. The Client will need to complete any written documentation reasonably requested by the branch to complete the Client's transactions. The Agreement will govern transactions conducted through a branch in addition to any documentation requested by the branch.

### 4. Security

- 4.1. *Procedures.* To help ensure the security, accuracy, authenticity and legitimacy of communications and instructions, the Client will:
  - (a) follow such procedures and controls BMO may reasonably require (and in the absence of any such specified requirements, use commercially reasonable procedures and controls) in connection with any Service;
  - (b) take all necessary steps to preserve the confidentiality of, and to prevent the fraudulent or other misuse of, all passwords and forms of security, security devices, data protection and identification used in connection with any Service; and
  - (c) diligently supervise and monitor the conduct and work of all representatives and employees having any involvement in instructions to or other communications with BMO.
- 4.2. *Security Compromise.* If at any time the Client believes that the security of communications between the Client and BMO has been compromised or is in any way insecure, the Client will immediately notify BMO and provide all reasonable assistance BMO requires to investigate and correct the problem.

### 5. Bank Records

- 5.1. BMO's records will, in the absence of obvious error or as otherwise agreed by BMO in writing, be conclusive evidence of the information BMO receives and the transactions between the Client and BMO. The computer-generated or electronic records BMO receives or creates will be admissible in a court of law and the Client waives any defence the Client may have as to their admissibility.

### 6. Events of Default

- 6.1. The Client's actions or omissions that may be an "Event of Default" under the Agreement include:



- (a) *Failure to Pay.* if the Client fails to pay when due any amount payable, fails to satisfy any condition the Client is required to satisfy, or the Client fails to observe or perform any agreement or obligation under the Agreement;
- (b) *Breach, Incorrect or Misleading Statements.* the Client breaches any representation, warranty or agreement made in the Agreement, or any certificate or statement of fact or any other communication from the Client to BMO is found to have been incorrect or misleading on or as of the date made in any respect BMO considers material;
- (c) *Insolvency.* if
  - (i) the Client is or becomes insolvent or bankrupt or is dissolved, liquidated or wound up;
  - (ii) any substantial assets are seized or otherwise attached pursuant to legal process or other means; or
  - (iii) any step or proceeding is taken by or against the Client under or in respect of any bankruptcy, insolvency, reorganization or other similar law affecting creditors' rights against the Client, including a resolution passed by the Client's directors, partners or members;
- (d) *Judgments.* if one or more judgments, decrees or orders is rendered against the Client for the payment of money and any of such judgments, decrees or orders would, in BMO's opinion, have a material adverse effect and continue unsatisfied and in effect for a period of more than ten (10) business days without being vacated, discharged, satisfied or stayed pending appeal; or
- (e) *Unenforceable Provisions.* if any provision of the Agreement BMO considers material is held by a court of competent jurisdiction to be unenforceable.

### 7. Termination

- 7.1. *Immediate.* BMO may, at its option, immediately and without any notice or other action (a) terminate the Agreement or any or all Services in the event the relevant account(s) is closed or upon or during an Event of Default, and (b) terminate any Service if BMO determines that the Service has not been used by Client for a period of at least 12 months.
- 7.2. *With Notice.* Either the Client or BMO may terminate the Agreement or any Service upon not less than thirty (30) days' written notice to the other. Upon any termination any and all relevant obligations under the Agreement, will cease at once (other than any obligation that is stated to survive termination).
- 7.3. *Obligations on Termination.* The Client will, immediately following any termination, return to BMO (or destroy and certify such destruction at BMO's request) all security devices, software, manuals, User Documentation, confidential information and other documentation, goods and materials BMO provided to the Client in connection with the Services.
- 7.4. *Cumulative Remedies.* Every remedy, right and benefit is cumulative and is in addition to every other remedy, right or benefit under the Agreement or that may exist by law.
- 7.5. *Provisions Survive.* Sections 5, 7, 8, 9, and 10 of this Master Agreement survive any termination of this Master Agreement.



### 8. Indemnification by Client

- 8.1. In addition to any other indemnification obligations of the Client to BMO, the Client agrees to indemnify BMO and its officers, directors, employees, agents and service providers (collectively, "**Indemnified Parties**") for, and defend and hold harmless each of the Indemnified Parties from and against, any and all actions, losses, damages, claims, demands, liabilities, costs or expenses, including court costs and reasonable legal fees and disbursements (collectively, "**Claims**") resulting directly or indirectly from BMO's performance of its obligations under this Master Agreement or BMO's provision of any Service, except to the extent that such Claims are determined by a court of competent jurisdiction by a final and non-appealable judgment to have resulted from BMO's gross negligence or willful misconduct.

### 9. Limitation of Liability; Exclusions

- 9.1. Neither BMO nor any of its suppliers, licensors, service providers or vendors ("**Providers**") will have any liability in tort, contract or otherwise for any loss, damage, claim, judgment, cost or expense (collectively, "**Damages**") that the Client sustains from use of the Services, except for direct Damages attributable to BMO's gross negligence or willful misconduct.
- 9.2. In no event will BMO or its Providers be liable to the Client or any third party for any indirect, special, punitive, incidental or consequential Damages. This includes, but is not limited to, lost business, profits or revenue, whether or not BMO is advised of the possibility of such loss or damage with respect to any such Damages.
- 9.3. For greater certainty, in no event will BMO or its Providers be liable to the Client or any third party for any Damages whatsoever from any:
- (a) operation or operational failure, delay, Service unavailability including any hardware or software system failure or communication system failure;
  - (b) non-payment, late or improper payment resulting from insufficient funds, credit or other limits on the Client's accounts, inaccurate, incomplete or unauthorized instructions or information BMO receives;
  - (c) act or omission, fraud, neglect, failure or error of any other financial institution, delivery service, utility or communications provider, third party network or the Client's agent or representative or similar person;
  - (d) non-receipt or delayed receipt, or receipt with errors or corrupted data, or receipt in a format not acceptable to BMO, of information or data BMO requires to perform any of its obligations or Services.
- 9.4. *Bank Exclusions.* Except as expressly provided for, BMO makes no representations or warranties, either express or implied, of any kind with respect to any Service or its performance under the Agreement. No descriptions or specifications, whether or not incorporated into any agreement, form representations or warranties of any kind.
- 9.5. *"As Is".* All information found on the Platform is provided ""as is."" BMO makes no representations or warranties of any kind, either express or implied, with respect to the Services or Platform, or any sites linked to or from the Platform, including, without limitation, the implied conditions or warranties of merchantability and fitness for a particular purpose.
- 9.6. *Bank's Limitation of Liability.* BMO will have no responsibility or liability whatsoever for any loss due to any unauthorized instruction or other communication from the Client or the Client's agents or representatives to BMO, unless such loss was caused solely by BMO's gross negligence or willful misconduct.



- 9.7. *Acts of God.* BMO will not be liable to the Client or to any other party in any way for delay in performance or for the non-performance of any provision of the Agreement if such delay or non-performance is directly or indirectly caused by an event or a series of events beyond BMO's control. Such events include, without limitation, acts of God, loss of communication systems and events such as flood, storm, fire, casualty, accident, riot, terrorism, war, labour dispute, communicable disease outbreak, public health emergency or other similar events.

### 10. Fees and Charges

- 10.1. *Disclosure and Changes to Fees and Charges.* Fees and charges for the Services may be in a pricing schedule(s) forming part of the Agreement, or will be otherwise communicated to the Client in another document or format, in BMO's discretion (collectively, "**Pricing Information**"). Unless otherwise agreed, BMO may amend any such Pricing Information from time to time by notice in accordance with Sections 11 and 12.1.
- 10.2. *Payment Authorization.* The Client will pay BMO the specified fees for the Services (unless other compensation arrangements have been mutually agreed upon in writing). The Client authorizes BMO, but BMO is not obligated, to debit the Client's applicable account with any amounts due and owing by the Client to BMO, including any fees or other amounts. In the event no account is designated or there are insufficient funds in the applicable account, any account the Client holds at any of BMO's branches can be debited.
- 10.3. *Interest on Overdue Fees.* The Client will also pay interest on charges, fees and other amounts the Client owes to BMO and not paid when due, at the rate as may be established from time to time in a document containing Pricing Information. All interest will be calculated and payable monthly, not in advance, both before and after demand, default and judgment.
- 10.4. *Verification of Compensation Statement:* BMO may provide the Client with monthly compensation statements indicating the fees owing by the Client and debited from the Client's account for the Services and the interest paid or charged to the Client. The Client will verify the statements and notify BMO in writing of any errors, irregularities or omissions within:

- 30 days of the mailing of the compensation statement to the Client, or
- if not mailed, within 30 days of the delivery or availability of the compensation statement to the Client.

At the end of the 30 day period it will be conclusively settled between the Client and BMO that:

- the compensation statement is accurate,
- all fees and amounts charged as set out in the compensation statement are properly chargeable, and
- the Client will not be entitled to be credited with any sum not credited in the compensation statement.

Notwithstanding the foregoing, BMO has the right at any time to make adjustments for any amounts improperly credited and any alleged errors, irregularities or omissions outlined in the notice or to charge back items for which payment has not been received.

- 10.5. *Other Fees:* If the Client uses additional Services, including additional elements of or enhancements to an existing Service, the fees for such additional Services are at BMO's prevailing rates or as provided to the Client and communicated via the compensation statement(s) provided to the Client or in another document or format in BMO's discretion. Such fees will be effective in the month of implementation of the additional Service or Service enhancement.



10.6. *Applicable Taxes:* If BMO:

- is required by any applicable law to remit an amount for or on account of any taxes in respect of the Services provided to the Client; and
- has not collected such tax from the Client for remittance to the relevant authority;

then the Client will pay BMO the amount of such tax (including any related amount for interest and penalties) within ten (10) days of BMO's written request.

### 11. Notices

11.1. *Sending Notices.* Unless otherwise specified, all notices, documents or other communications under the Agreement (including, for greater certainty, Pricing Information) will be in writing and sufficiently given if delivered personally (including delivery by courier), sent by prepaid registered or certified mail (return receipt requested), transmitted by facsimile or sent by email, to BMO at the address(es) (physical and / or email, as applicable) or facsimile number indicated on the Selection Agreement or as may be otherwise communicated to the Client by BMO and to the Client at the most recent address(es) (physical and / or email) or facsimile number in BMO's records.

11.2. *Deemed Delivery.* Any notice delivered personally will be deemed to have been given and received on the day it is delivered at such address provided such day is a business day (or if such day is not a business day on the next business day).

Any notice mailed to a party will be deemed to have been given and received on the 3rd business day following the date of its mailing; provided that, during any period of mail service disruption, notice will be delivered personally or transmitted by facsimile.

Any notice transmitted by email or facsimile to a party will be deemed given and received on the 1st business day following the date of transmission.

### 12. Amendments

12.1. Except as otherwise set forth in the Agreement, BMO may from time to time, by not less than 30 days written notice to the Client, amend any provision in the Agreement or Pricing Information. Any amendment will be effective as of the date specified in such notice.

### 13. Other Provisions

13.1. *Use of Service Providers.* BMO may use or provide access to services or equipment of service providers, including BMO's affiliates, in order to facilitate all or any portion of the Services, including by way of example, a service bureau, help desk or website hosting, and BMO confirms the Client's authorization to disclose to such service provider, subject to appropriate confidentiality arrangements, any client information necessary to provide the Services.

13.2. *Entire Agreement.* There are no conditions, warranties, representations or other agreements between the Client and BMO in connection with the Services (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in the Agreement.

13.3. *Severability.* Any provision in the Agreement that is determined to be illegal, invalid or unenforceable in any jurisdiction will be severed from the balance of the Agreement without affecting the remaining provisions or the validity or enforceability of such provision in any other jurisdiction.

13.4. *Interpretation.* Headings contained in the Agreement are for convenience only, and will not affect the meaning or construction of any of the provisions. No part of the Agreement will be interpreted against BMO on the grounds that BMO prepared it.



13.5. *Waiver of Rights.* A waiver by the Client or BMO of any breach, default or non-compliance (in this Section collectively called "Breach") under the Agreement is only effective if it is in writing and signed.

No waiver will be inferred from any failure to act, or any delay in acting, in respect of any Breach or by anything done or not done.

No waiver in writing of any Breach under the Agreement will be a waiver of either the Client's rights or BMO's rights under the Agreement in respect of any other, continuing or subsequent Breach that is the same or of any other nature.

13.6. *Assignment.* Neither the Agreement or any of the rights and obligations hereunder, may be assigned by the Client, without BMO's prior written consent. No consent by BMO to any such assignment will have the effect of releasing the Client from the Client's obligations under the Agreement unless BMO releases the Client in writing. BMO may, at its option, assign or transfer, directly, indirectly or by operation of law, the Agreement, and its rights, remedies and obligations thereunder.

13.7. *Binding on Successors.* The Agreement benefits and binds the Client's and BMO's respective successors and permitted assigns.

13.8. *Choice of Law.* The Agreement will be interpreted under and governed by either:

- (i) the laws of Ontario unless another Canadian province is designated in clause ii) herein, or
- (ii) \_\_\_\_\_

(either i) or ii) as applicable is the "Province").

In legal proceedings the Agreement will be deemed to have been made and performed in the Province, and the courts of the Province will have jurisdiction over any disputes. The Client irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the Province, provided that nothing herein contained will prevent BMO from proceeding at its election against the Client in the courts of any other province, territory, country or jurisdiction.

13.9. *UN Convention Inapplicable.* The United Nations Convention on Contracts for the International Sale of Goods and any local implementing legislation does not apply to the Agreement.

13.10. *Execution of Other Documents.* The Client will perform any act and sign and deliver any document or agreement BMO reasonably requires to carry out the Agreement. By way of illustration, this may include the Client providing certified resolutions (or similar proof) of authority to execute this or other Treasury agreements and licenses or sublicenses from BMO or third parties that may be required in connection with certain Services.

13.11. *Counterparts and Transmission.* The Agreement and any ancillary documents may be executed in counterparts, each of which shall be deemed to be an original and together shall constitute one and the same instrument. To evidence its execution of an original counterpart of the Agreement (or ancillary document), a party may send a copy of its original signature on the execution page to the other party by facsimile or electronic transmission and such transmission shall constitute delivery of an executed copy of the Agreement (or ancillary document) to the receiving party as of the date written on the Agreement (or ancillary document).

13.12. *Secure Electronic Mail.* The Client recognizes that unencrypted messages including electronic mail are not secure. If the Client chooses to communicate with or deliver agreements and documents to BMO (or its affiliates) by electronic mail, then the Client acknowledges that BMO (and its affiliates) may rely on the contents of such electronic mail (including any attachments) as having been authorized by the Client. The Client agrees that BMO (and its affiliates) may reply to the Client in an unencrypted electronic mail. The Client assumes the entire risk for any such unencrypted electronic communications.



## Treasury Services Master Agreement (cont'd)

13.13. *Mobile Access.* As part of the Service, we may make available to you a mobile app that allows Authorized Users to access information from and conduct certain transactions through Online Banking for Business from their mobile devices ("Mobile App"). Your end users may use biometric ID functionality to access the Mobile App. If your end users use the biometric ID functionality, you accept and will be legally bound by the legal terms for biometric ID functionality and the BioConnect license agreement, which can be found at the link below or obtained by contacting your Treasury & Payment Solutions representative. You represent and warrant that you have reviewed the legal terms and the license agreement. You also agree that our licensor for biometric ID functionality, BioConnect Inc., may enforce the legal terms and the BioConnect license agreement directly against you.

[Legal Terms and BioConnect License Agreement](#)

