

## MERCHANT TERMS AND CONDITIONS

Last updated: December 18, 2018

These Merchant Terms and Conditions apply to Merchant's access to and use of: (1) our mobile payment solution (the "Mobile Payment Solution") that enables users ("Customer") of the Radtab™ mobile application (the "App") to open, review, and pay their bar or restaurant tab with their compatible mobile device; (2) our Radconnect™ customer relationship management solution ("Radconnect™"); (3) certain software related to the Mobile Payment Solution and Radconnect™ that we make available to Merchant from time to time (the "Radtab Software"); and (4) any other services, technology, content, data, and features made available by us (together with the Mobile Payment Solution, Radconnect™, and the Radtab™ Software, the "Radtab™ Platform") pursuant to these Merchant Terms and Conditions. In these Merchant Terms and Conditions, "Radtab," "we," "us," and "our" refer to Radtab, Inc. (dba Radtab) and our affiliates, successors, and assigns and "Merchant" refers to any user of the Radtab™ Platform. Radtab and Merchant are individually referred to in these Merchant Terms and Conditions as a "Party" and collectively as the "Parties."

In conjunction with Merchant's access to and use of the Radtab™ Platform, Merchant may be subject to additional terms, rules, policies, and conditions, including, but not limited to, purchase orders, platform specifications, end user license agreements for any portion of the Redtab Platform, or any agreement that specifically refers to or links to these Merchant Terms and Conditions (collectively, "Additional Terms"), which are hereby incorporated by reference in these Terms. In the event of a conflict between these Terms and any Additional Terms, the Additional Terms will control. Together, these Merchant Terms and Conditions, along with any applicable Additional Terms are collectively referred to as the "Terms."

Merchant agrees to abide by the portions of the Radtab User Terms and Conditions and (<https://radtab.co/terms-and-conditions/>) Radtab Privacy Policy (<https://radtab.co/privacy-policy/>) that apply to "Establishments."

## **1. ACCESS.**

By accessing or using the Radtab™ Platform in any way, Merchant agrees to be bound by these Terms. If Merchant does not agree to all the terms and conditions of these Terms, Merchant may not access or use the Radtab™ Platform. We may, without prior notice or liability to Merchant, modify any portion of the Radtab™ Platform by adding or removing features and functionalities. Except as otherwise expressly stated by us, Merchant's access to and use of the Radtab™ Platform are subject to, and constitute Merchant's acceptance of, the version of these Terms in effect at the time of Merchant's access or use. We may also revise these Terms from time to time in our sole discretion, subject to any law, rule, regulation, ordinance, code, or order to which a Party may be subject or under which a Party may exercise rights ("Applicable Law"). When we revise these Terms, we may notify Merchant via email, the Radtab™ Platform, our website, on a billing statement, or any other method we deem to be reasonable in the circumstances. Except as otherwise expressly stated by us, all changes to these Terms will be effective for the next billing cycle and apply to Merchant's access to and use of the Radtab™ Platform thereafter. Merchant is free to decide whether or not to accept a revised version of these Terms, but accepting these Terms, as revised, is required for Merchant to continue accessing or using the Radtab™ Platform. If Merchant does not agree to these Terms or any revised version of these Terms, Merchant's sole recourse is to terminate its access to or use of the Radtab™ Platform. If Merchant terminates due to this Section, such termination must be made in writing and the termination will be effective immediately.

## **2. LIMITED LICENSE.**

**2.1** Subject to, and except as otherwise expressly provided by, these Terms, Radtab hereby grants Merchant a limited, non-exclusive, non-transferable, non-sublicensable, and revocable right and license to access and use the Radtab™ Platform, including all updates, upgrades, and modifications thereto made available by Radtab, via download or otherwise, from time to time, solely for its intended purposes in accordance with these Terms. Merchant must follow Radtab's instructions with respect to the Radtab™ Platform. Radtab may host elements of the Radtab™ Platform using its own

infrastructure or it may engage a third party to host the Radtab™ Platform on its behalf. Merchant is responsible for making all arrangements necessary for Merchant to access and use the Radtab™ Platform, including obtaining and maintaining hardware, software, communications equipment, and network infrastructure and for paying all third-party fees incurred to access and use the Radtab™ Platform.

**2.2** To enable Merchant's access to and use of the Radtab™ Platform, Merchant hereby grants Radtab access to Merchant's point-of-sale ("POS") system so that Radtab may install, update, and maintain the Radtab Software on Merchant's POS system, including any installation performed by any software installer program or application provided by Radtab. Merchant agrees to provide any and all assistance to Radtab and its employees and representatives to complete such installation, updates, and maintenance.

**2.3** Merchant acknowledges that (i) the Radtab™ Platform may contain other software or components that are either owned by a third party or in the public domain ("Third-Party Software"), and (ii) Radtab has no proprietary interest in Third-Party Software and, as such, cannot grant Merchant a license to use Third-Party Software. Merchant's rights in Third-Party Software are governed by and subject to the terms and conditions set forth in the applicable licenses for Third-Party Software. Merchant acknowledges and agrees to fully comply with such terms and conditions. IN ADDITION TO ANY DISCLAIMERS SET FORTH IN SUCH TERMS AND CONDITIONS, THE DISCLAIMERS AND THE LIMITATIONS OF LIABILITY SET FORTH IN THESE TERMS APPLY TO RADTAB AND ITS LICENSORS WITH RESPECT TO ANY THIRD-PARTY SOFTWARE. RADTAB IS NOT OBLIGATED TO PROVIDE SUPPORT SERVICES FOR THIRD-PARTY SOFTWARE UNLESS EXPRESSLY AGREED TO IN WRITING BY RADTAB.

### **3. FEES AND TAXES.**

**3.1** In consideration for Merchant's access to and use of the Radtab™ Platform, Merchant agrees to pay the fees associated therewith. All Fees are due and payable in U.S. dollars and are non-refundable. Invoiced charges are due immediately and reoccurring charges will be due prior to the start of the new

period. If applicable, credit cards will be charged prior to the start of any billing period. Unless a term is specified in Additional Terms, Merchant may cancel at any time. Merchant will not be refunded any amount (pro-rated or otherwise) for the remainder of the unused billing period after cancellation. Cancellation will not release Merchant from its fee obligations.

**3.2** All Fees are exclusive of any applicable sales, excise, use, or similar taxes. Merchant must pay all such taxes either directly or to Radtab or as otherwise required by Applicable Law. Merchant acknowledges and agrees that it is responsible for determining, paying, withholding, filing, and reporting all taxes, duties, and other governmental assessments associated with Merchant's access to and use of the Radtab™ Platform. We are not responsible for determining whether Merchant owes taxes in connection with Merchant's access to or use of the Radtab™ Platform or for collecting, reporting, or remitting taxes arising from Merchant's access to or use of the Radtab™ Platform, except for our own income taxes. Merchant agrees to reimburse and indemnify Radtab for any taxes, penalties, and interest assessed by any taxing authority regarding amounts owed by Merchant in connection with these Terms.

**3.3** Merchant must provide complete and accurate billing and contact information to Radtab and notify us of any changes to such information. Any amount not paid when due will be subject to finance charges equal to 1.5% percent of the unpaid balance per month or the highest rate permitted by applicable law, whichever is less. Merchant will reimburse any costs or expenses, including without limitation, reasonable attorneys' fees, incurred by Radtab to collect any amount not paid when due. Further, we may, without limiting our other rights and remedies, accelerate any unpaid fee obligations so that all such obligations become immediately due and payable.

**3.4** Merchant agrees that purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Radtab regarding future functionality or features.

#### **4. <sup>[ ]</sup><sub>SEP</sub> PLATFORM SUPPORT, MAINTENANCE, AVAILABILITY, AND TRAINING.**

**4.1** Radtab will provide Merchant with reasonable support to help resolve issues related to the

Radtab™ Platform. Merchant must promptly: (i) refer all inquiries and complaints from Customers concerning the App and the Mobile Payment Solution; (ii) provide any written documentation related to such inquiries and complaints to Radtab; and (iii) cooperate with Radtab to resolve Customers' inquiries and complaints to the extent necessary.

**4.2** We may need to carry out routine or urgent maintenance for the Radtab™ Platform from time to time. We will use commercially reasonable efforts to inform Merchant of any downtime and to restore the Radtab™ Platform as soon as reasonably practicable; provided, however, that Radtab will not be liable if all or any part of the Radtab™ Platform is unavailable at any time or for a period of time for any reason.

**4.3** Radtab, in its discretion, may provide written and/or electronic materials to Merchant to train its staff on the Radtab™ Platform. In addition, Radtab, in its discretion, and subject to Merchant's approval, may provide in-person, telephonic, and online training on the Radtab™ Platform to Merchant's staff.

## **5. ADDITIONAL TERMS FOR THE MOBILE PAYMENT SOLUTION AND**

### **RADCONNECT™.**

**5.1** Merchant must accept Customers' payments using the Mobile Payment Solution, or any other part of the Radtab™ Platform, in accordance with Radtab's then-current standard operating instructions and these Terms. Merchant acknowledges that any such payments will be treated as a "card-not-present" transaction by Merchant's payment processor, and may subject Merchant to increased fees and chargeback liability.

**5.2** Merchant must provide Customers with digital transaction receipts as required by Card Network Rules and Applicable Law. For purposes of these Terms, "Card Network Rules" mean the bylaws, rules, and other published operational and technical requirements of any payment network (e.g., Visa®, MasterCard®, American Express®, and Discover®) applicable to the Radtab™ Platform, Merchant's acceptance of payment cards, and a Party's obligations under these Terms.

**5.3** Merchant may not impose any additional restrictions, conditions, or fees on Customers' use of the App, the Mobile Payment Solution, or any other portion of the Radtab™ Platform, or engage in any practices that discriminate against or discourage Customers' use of the Radtab™ Platform or otherwise cause Customers additional burden when using the Radtab™ Platform.

**5.4** The Mobile Payment Solution or other portion of the Radtab™ Platform may allow Merchant to select a minimum and/or default tip or gratuity that will be presented to Customers in the App. Merchant is solely responsible for distributing such gratuity to its workers and determining Merchant's tax withholding and payment obligations relating to gratuities added to or included in Customers' payments.

**5.5** Merchant acknowledges and agrees that Radtab: (i) is not a financial institution and does not provide banking or payment processing services; (ii) is not a party to the payment transactions performed by Merchant and Customers using the Radtab™ Platform; (iii) does not hold or transmit any funds belonging to Customers or Merchants; (iv) is not liable for delays in delivery of Customers' payments for any reason, including, but not limited to, as a result of the actions or inactions any banks, processors, card networks, or other third parties; (v) is not liable for any Customers' payments that are not completed for any reason, including but not limited to: (a) a Customer's payment account does not contain sufficient funds to complete the transaction or the transaction would exceed the credit limit or overdraft protection of Customer's payment account; (b) a Customer has not provided Radtab with correct or updated payment account information; or (c) a Customer's payment account has expired.

**5.6** Radtab is not responsible for any overcharges, chargebacks, reversals, or other payment disputes relating to payment transactions facilitated by the Radtab™ Platform. Radtab will use commercially reasonable efforts to assist Merchant in disputing and resolving any chargebacks or reversals of Customers' payments.

**5.7** Merchant acknowledges that promotional offer campaigns facilitated through Radconnect™ ("Offers") are subject to certain limitations established by Radtab and other third parties, from time to time, including, but not limited to, Customers' eligibility for, and redemption of, Offers.

## **6. INTELLECTUAL PROPERTY RIGHTS.**

**6.1** Merchant acknowledges and agrees that the Radtab™ Platform is protected by copyright, trademark, patent, trade secret, and other intellectual property laws. Except as expressly provided in these Terms, Radtab does not grant Merchant any licenses, express or implied, to the Radtab™ Platform or any of Radtab's other intellectual property. Radtab retains all rights, titles, and interest in and to the Radtab™ Platform, including any updates, upgrades, and modifications thereto, and any associated patents, trademarks, copyrights, trade secrets, and other intellectual property rights.

**6.2** Except as expressly provided by these Terms or with Radtab's prior written consent, Merchant may not permit any third party to, (i) take any action that imposes or may impose (in our sole determination) an unreasonable or disproportionately large load on the Radtab™ Platform or our infrastructure; (ii) utilize any device, software, or routine that will interfere or attempt to interfere with the functionality of the Radtab™ Platform; (iii) sell, resell, rent, lease, copy, distribute, publish, display, transmit, provide access to, license or sublicense any portion of the Radtab™ Platform to a third party; (iv) use, copy, or incorporate any Radtab™ Platform portion, feature, function, or user interface into any other product or service; (v) copy, reproduce, modify, translate, prepare derivative works of, de-compile, reverse engineer, disassemble, or otherwise attempt to derive the source code of the Radtab™ Platform; (vi) remove, obscure, or alter any copyright notice, trademarks, logos, trade names, or other proprietary rights notices contained in the Radtab™ Platform; (vii) use any malicious code in connection with the Radtab™ Platform; (viii) attempt to gain unauthorized access to the Radtab™ Platform, intellectual property or any of Radtab's systems or networks; (ix) use the Radtab™ Platform to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (x) access any portion of the Radtab™ Platform in order to build a competitive product or service; or (xi) use the Radtab™ Platform in violation of these Terms or any Applicable Law. We may, but are not obligated to, monitor Merchant's use of the Radtab™ Platform.

**6.3** Merchant may submit comments, information, questions, data, ideas, description of processes, or other information to Radtab from time to time (collectively, "Feedback"). Radtab may freely use,

copy, disclose, license, distribute, and otherwise exploit any Feedback in any manner without any obligation, royalty, or restriction based on intellectual property rights or otherwise.


## **7. MARKETING AND PUBLICITY.**

**7.1** Merchant hereby grants Radtab a non-exclusive, non-transferable, limited, and revocable license to use Merchant's name, logos, trademarks, service marks, and graphics in general listings of Merchants in the App, on Radtab's website and social media accounts, and in other print and electronic marketing materials solely to provide information about the Mobile Payment Solution.

**7.2** Radtab hereby grants Merchant a non-exclusive, non-transferable, limited, and revocable license to use Radtab's name, logos, trademarks, service marks, and graphics on its website and other marketing materials solely to provide information about the Mobile Payment Solution to Customers, subject to any usage guidelines provided by Radtab.

**7.3** Except as otherwise expressly permitted by these Terms, neither Party may use, copy, or modify any of the other Party's name, logos, trademarks, service marks, and graphics without such other Party's prior written approval. Each Party agrees to not use the other Party's name, logos, trademarks, and service marks in a manner that could reasonably cause confusion as to such Party's sponsorship or affiliation or in connection with any misleading statement. Each Party agrees to use appropriate ownership symbols (**™** or **SM** or **®**) when using the other's trademark or service mark (see Section 7.5 for Radtab marks and appropriate symbols). Each Party acknowledges that the other Party's name, logos, trademarks, service marks, and graphics are and will remain the exclusive property of such other Party.

**7.4** Each Party must cease using the other Party's name, logos, trademarks, service marks, and graphics upon termination of these Terms or if otherwise directed to do so by such other Party.

**7.5** Current Radtab marks include: Radtab<sup>™</sup>, the Radtab logo <sup>™</sup>, and Radconnect<sup>™</sup>. Usage note: if "Radtab" is used as a trade name (a substitute for Radtab, Inc.) no symbol is necessary.

However, if it is as used as an adjective ("Radtab<sup>™</sup> payment solution") then the symbol should be



used.

## **8. POS DATA.**

To the maximum extent permitted by Applicable Law, Merchant hereby grants Radtab and its affiliates, successors, and assigns an irrevocable, non-exclusive, transferable, and assignable license and right to collect certain transaction data from Merchant's POS system ("POS Data") as long as Merchant accesses or uses the Radtab™ Platform. POS Data includes information about the venue, SKU-level data on items purchased by Merchant's customers, amounts paid by Merchant's customers, and metadata on payment methods used by Merchant's customers (such as payment card type, payment card issuer, and the last four digits and expiration date of the payment card). To the maximum extent permitted by Applicable Law, Merchant also hereby grants Radtab and its affiliates, successors, and assigns an irrevocable, non-exclusive, transferable, assignable, and perpetual license and right to use and retain the POS Data for any lawful purpose, including, but not limited to: (i) as necessary to provide, maintain, and improve the Radtab™ Platform; (ii) to provide Offers to Customers; and (iii) to perform analytics for third parties. Merchant is solely responsible for the accuracy, quality and legality of POS Data and the means by which Merchant acquired such POS Data. Merchant is solely responsible for independently maintaining and backing up the Merchant's copy of Customer and transactional data and shall maintain, back up, and create duplicate copies of its records and POS Data, as it deems necessary. Radtab is not required to maintain any backup or duplicate copies of any Merchant's POS Data.

## **9. PLATFORM DATA.**

**9.1** Radtab exclusively owns all right, title, and interest in and to any and all data (other than the POS Data) that is provided to, obtained by, or derived by Radtab in connection with the App and the Radtab™ Platform ("Platform Data"), including, but not limited to, data regarding Customers and their use of the App, and, subject to Radtab's Privacy Policy and Applicable Law, may use Platform Data for any lawful purpose. To the extent Merchant receives Platform Data in connection with its access to or use of the Radtab™ Platform, Merchant may only use Platform Data as necessary to

perform its obligations under these Terms, except as expressly provided in Section 9.2 or as otherwise expressly required by Applicable Law. Without limiting the foregoing, Merchant may not use Platform Data for any other purpose, including, but not limited to, marketing to or communicating with Customers other than through the Radtab™ Platform.

**9.2** Notwithstanding Section 9.1 and except as otherwise provided in any applicable Additional Terms, Radtab, in its sole discretion, may from time to time grant, convey, sell, or otherwise transfer to Merchant a non-exclusive limited license to use certain portions of the Platform Data, such as aggregated, statistical, and/or anonymous data.

**9.3** Merchant must: (i) restrict disclosure of Platform Data to its employees, officers, directors, and agents solely on a “need to know” basis in accordance with these Terms; (ii) advise its employees, officers, directors, and agents of their confidentiality obligations; (iii) require its employees, officers, directors, and agents to protect and restrict the use of Platform Data; (iv) use the same degree of care to protect Platform Data as it uses to safeguard its own confidential information of similar importance, but in no event less than a reasonable degree of care; and (v) establish procedural, physical, and electronic safeguards to prevent the compromise or unauthorized disclosure of Platform Data. In the event there is a breach of security of Merchant that results or may result in unauthorized disclosure of Platform Data, Merchant must immediately notify Radtab of such breach, the nature of such breach, and the corrective action taken to respond to such breach and must take all steps, at its own expense, to immediately limit, stop, or otherwise remedy such misappropriation, disclosure, or use. Merchant is solely responsible for any Platform Data in its possession or under its control and must bear the risk of loss resulting from its possession, storage, transmission, and use of such Platform Data.

**9.4** Within 30 days of the termination of these Terms or at any time upon Radtab’s request, Merchant must return to Radtab (or destroy if so directed by Radtab) all Platform Data in its possession or in the possession of any employee or agent of Merchant, as directed by Radtab.

## **10. REPRESENTATIONS AND WARRANTIES.**

In addition to any other representations and warranties set forth in these Terms, Merchant represents

and warrants to Radtab that, at all times: (i) if applicable, Merchant is duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation or incorporation; (ii) if applicable, Merchant is qualified to transact business and in good standing in each jurisdiction in which it operates; (iii) Merchant has all requisite right, power, and authority to accept and agree to these Terms and perform its obligations and grant the rights, licenses, and authorizations granted by Merchant hereunder; (iv) Merchant's employees, officers, directors, and agents accessing or using the Radtab™ Platform are duly authorized to access and use the Radtab™ Platform and legally bind Merchant to these Terms; (v) Merchant and all of its employees, officers, directors, and agents will comply with these Terms, all Applicable Law, Radtab User Terms and Conditions, Radtab's Privacy Policy, and applicable payment industry standards, including, but not limited to, the PCI DSS and Card Network Rules, EMV as such standards may be amended from time to time, in the performance of Merchant's obligations and exercise of Merchant's rights under these Terms; and (vi) Merchant's performance under these Terms shall not violate Applicable Law or any agreement to which it is a party or by which it is bound.

## **11. SUSPENSION AND TERMINATION.**

**11.1** We may, in our sole discretion, suspend, limit, or terminate Merchant's access to or use of the Radtab™ Platform for any reason, without notice or liability to Merchant. Merchant may stop using the Radtab™ Platform by providing 30 days' prior written notice via email to support@Radtab.co. Upon the termination of these Terms, Merchant must cease all use of the Radtab™ Platform.

**11.2** Termination of Merchant's access to and use of the Radtab™ Platform will not affect any of Radtab's rights or Merchant's obligations arising under these Terms prior to such termination. Provisions of these Terms that, by their nature, should survive termination of Merchant's access to and use of the Radtab™ Platform will survive such termination.

## **12. DISCLAIMERS.**

**12.1** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE RADTAB™

PLATFORM IS PROVIDED TO MERCHANT HEREUNDER STRICTLY ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTY OF ANY KIND, AND RADTAB HEREBY DISCLAIMS ANY AND ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, TITLE, ACCURACY OF DATA, NON-INFRINGEMENT, NON-INTERFERENCE, AND FITNESS FOR A PARTICULAR PURPOSE.

**12.2** WITHOUT LIMITING THE FOREGOING, RADTAB MAKES NO WARRANTY THAT (I) THE RADTAB™ PLATFORM WILL MEET MERCHANT’S REQUIREMENTS; (II) THE RADTAB™ PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (III) THE RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE RADTAB™ PLATFORM WILL BE ACCURATE OR RELIABLE; OR (IV) ANY ERRORS IN THE RADTAB™ PLATFORM WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY RADTAB OR ANY OF OUR AUTHORIZED REPRESENTATIVES WILL CREATE ANY WARRANTY.

### **13. LIMITATION OF LIABILITY.**

**13.1** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL RADTAB, OUR AFFILIATES, OR OUR OR THEIR EMPLOYEES, OFFICERS, DIRECTORS, OR AGENTS BE LIABLE TO MERCHANT OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, INCLUDING DAMAGES OR COSTS INCURRED AS A RESULT OF A LOSS OF TIME, SAVINGS, PROPERTY, PROFITS, BUSINESS, CONTRACTS, REVENUE, ANTICIPATED SAVINGS, DATA, OR GOODWILL, ARISING OUT OF OR RELATED TO THESE TERMS OR THE RADTAB™ PLATFORM, EVEN IF RADTAB HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

1 **3.2** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, RADTAB'S AGGREGATE LIABILITY TO MERCHANT FOR ANY CLAIM OR SERIES OF CLAIMS AND REGARDLESS OF THE FORM OF ACTION(S) WILL BE LIMITED TO THE GREATER OF: (I) THE TOTAL AMOUNT OF FEES (IF ANY) ACTUALLY PAID BY MERCHANT UNDER THESE TERMS FOR THE 12-MONTH PERIOD PRIOR TO WHEN THE CLAIM WAS BROUGHT or (II) \$1,000.

**13.3** IN ADDITION TO AND WITHOUT LIMITING ANY OF THE FOREGOING, RADTAB WILL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY RESULTING FROM ANY CONDITION BEYOND OUR REASONABLE CONTROL, INCLUDING, WITHOUT LIMITATION, ACTS OF GOD, ACTS OF TERRORISM, LABOR CONDITIONS, POWER FAILURES, INTERNET DISTURBANCES, OR SERVICES OR SYSTEMS CONTROLLED BY THIRD PARTIES.

**13.4** THE PARTIES AGREE THAT THE DISCLAIMERS, EXCLUSIONS, AND LIMITATIONS IN THESE TERMS ARE ESSENTIAL ELEMENTS OF THESE TERMS AND REPRESENT A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES. In particular, Merchant understands that we would be unable to provide the Radtab™ Platform to Merchant except on these terms and agrees that these Terms will survive and apply even if any limited remedy specified in these Terms is found to have failed its essential purpose.

#### **14. INDEMNITY.**

Merchant must indemnify, hold harmless, and (at our request) defend Radtab, our affiliates, and our and their respective employees, officers, directors, and agents from and against all damages, claims, suits, costs, fines, penalties, liabilities, and expenses (including reasonable attorneys' fees) that arise from a third party's claim arising out of or on account of or resulting from: (i) Customer's experience with Merchant, including but not limited to any goods or services Merchant provided by Merchant; (ii) any dispute between Merchant and Customer; (iii) Merchant's breach or alleged breach of these Terms; (iv) violation of Applicable Law, PCI DSS, EMV or the Card Network Rules by Merchant or

its employees, officers, directors, or agents; (v) infringement of any third-party intellectual property rights by Merchant or its employees, officers, directors, or agents; (vi) Merchant's tax obligations; and (vii) the gross negligence, fraud, or willful misconduct of Merchant or its employees, officers, directors, or agents or any other actions or omissions resulting in liability to us. Radtab reserves the right to assume the exclusive defense and control of any matter subject to indemnification by Merchant, in which event Merchant will cooperate in asserting any available defenses.

## **15. CONFIDENTIAL INFORMATION.**

Each Party (each a "Discloser") may disclose to the other party (each a "Recipient") information pertaining to the Radtab™ Platform ("Purpose") that the Discloser considers confidential ("Confidential Information"). Recipient may use Confidential Information only for the Purpose. Recipient must use a reasonable degree of care to protect Confidential Information and to prevent any unauthorized use or disclosure of Confidential Information. Recipient may share Confidential Information with its employees, directors, agents or third party contractors who need to know it and if they have agreed with either party in writing to keep information confidential. Confidential Information does not include information that: (a) was known to Recipient without restriction before receipt from Discloser; (b) is publicly available through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; (d) is independently developed by Recipient; or (e) relates to demographic information of the Customer or any other information covered by Radtab's Privacy Policy. A party may disclose Confidential Information when compelled to do so by law if it provides reasonable prior notice to the other party, unless a court orders that the other party not be given notice. This Section will continue for 4 years after the Terms expire or are cancelled. The breach of this Section will cause irreparable harm to the other party and monetary damages may not be a sufficient remedy for an unauthorized disclosure of the Confidential Information. If the breaching party discloses the Confidential Information in violation of this agreement, the other party may, without waiving any other rights or remedies and without posting a bond or other security, seek an injunction, specific performance, or other equitable remedy to prevent competition or further disclosure, and may pursue other legal remedies.

## **16. GENERAL.**

**16.1 Third-Party Payment Processors and POS Companies.** Certain third parties, including, without limitation, Merchant's payment processor or POS system vendor, may present these Terms (including Additional Terms) to Merchant for Merchant's review and acceptance. Such third parties are independent contractors and have no power to bind Radtab or incur obligations on its behalf.

**16.2 Export.** Merchant may not export or re-export any Radtab Software or other technology or materials related to the Radtab™ Platform, either directly or indirectly, without Radtab's prior written consent and any required license from the appropriate governmental agency. Merchant will not use the Radtab™ Platform in the European Union.

**16.3 Audit.** Upon reasonable notice to Merchant, Radtab may, either itself or through a third-party auditor, enter Merchant's premises during Merchant's normal business hours to inspect and audit Merchant's POS system, computer systems, network, and records solely to verify Merchant's compliance with these Terms.

**16.4 Governing Law and Jurisdiction.** The validity, interpretation, construction, and performance of these Terms will be governed by the laws of the State of South Carolina, without giving effect to the principles of conflict of laws. The federal and state courts located in Charleston County, South Carolina will be the exclusive venue for any dispute or claim between the Parties, or against any agent, employee, successor, or assign thereof, arising out of or in connection with these Terms, and the Parties hereby consent to the personal jurisdiction of those courts for such purposes.

**16.5 Relationship of Parties.** No agency, joint venture, partnership, trust, or employment relationship is created between Radtab and Merchant by way of these Terms. Neither Party will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent.

**16.6 Assignment.** Merchant may not transfer or assign these Terms or any license set forth herein, in whole or in part, without Radtab's prior written consent. Radtab may assign these Terms without

restriction and without Merchant's prior consent. Any attempted transfer or assignment by Merchant without our prior written consent will be null and void. These Terms will be binding on all permitted assignees.

**16.7 Severability.** If any part or provision of these Terms are found to be unenforceable, such part or provision may be modified to make the Terms, as modified, legal and enforceable. The balance of the Terms shall not be affected.

**16.8 Waiver.** The failure by us to enforce at any time any of the provisions of these Terms, to exercise any election or option provided herein, to require at any time Merchant's performance of any of the provisions herein, or to enforce our rights under these Terms or Applicable Law will not in any way be construed as a waiver of such provisions or rights. The express waiver by us of any provision, condition, or requirement of these Terms will not constitute a waiver of any future obligation to comply with such provision, condition, or requirement.

**16.9 Entire Agreement.** These Terms (which include Merchant Terms and Conditions along with any applicable Additional Terms) constitute the entire agreement between Radtab and Merchant, and supersede and replace any prior representations, agreements, negotiations, and understandings between Radtab and Merchant, whether written or oral, relating to the Radtab™ Platform. These Terms may be revised only by Radtab in accordance with Section 1.

**16.10 Notices.** Radtab will send all notices and other communications regarding the Radtab™ Platform to Merchant at the email address Merchant provided to Radtab during signup, as may be updated by Merchant from time to time by contacting us at support@radtab.co. Merchant will be considered to have received a notice from us under these Terms when we send it to the email address we have in our records for Merchant or when we mail such notice to the mailing address Merchant provided, as may be updated by Merchant from time to time by emailing support@radtab.co. Except as otherwise provided in these Terms, all notices to Radtab that are intended to have a legal effect must be in writing and delivered via email to support@radtab.co.