## **Datacap Terms and Conditions of Usage**

- 1. In consideration of your payment of the fee for the Datacap products (the "Products") and software (the "Software"), you are hereby granted a non-exclusive, non-transferable license to use the Products and Software for as long as your merchant processing relationship with EVO Merchant Services ("EVO") continues, and as long as you continue to pay the fees owed to EVO for the Products and Software. In the event your payment of the fees are discontinued, the Software and Products will be deactivated, and you shall remain liable for all outstanding fees owed on account of your use of the Software and Products.
- 2. You shall not: (a) assign, encumber or otherwise transfer or attempt to transfer the Products, or any portion thereof (b) modify, disassemble, decompile, reverse engineer, recreate, generate, or create derivative works from the Products or any portion thereof (including, without limitation, the Software); (c) contribute the Products or the Software to the public domain or the open source community or otherwise make the Products or the Software publicly available; or (d) make any copies of the Products or the Software, other than as permitted herein, or remove any copyright, trademark, patent, or other proprietary notices from the Products or any portion thereof (including, without limitation, the Software).
- 3. You acknowledge and agree that Datacap has all right, title, and interest in and to the Products and the Software. You shall not translate or migrate the Products or the Software into another format, language or hardware platform, make the Products or the Software available to anyone, exploit, license, sublicense, sell, transfer, publish, distribute, re-lease, lend or electronically transfer or communicate use in a network time-sharing arrangement, computer service business, multiple CPU environment or arrangement or otherwise make available or grant rights in the Products or the Software. You agree and acknowledge that the Products and the Software embody Datacap's trade secrets and copyrights. You further acknowledge and agree that all right, title and interest in the Products and the Software, including all trade secrets, trademarks, copyrights and other intellectual property rights pertaining thereto, are and shall remain vested in Datacap. You agree that any reference to the Products by you in any written materials (including on any website) shall properly reflect Datacap's ownership of such Products, including the use of the "TM" symbol where applicable. Nothing contained in this Agreement shall be construed as transferring any of such rights to you or any third party.
- 4. Each party acknowledges that certain information that it will acquire from the other party may constitute such other party's Confidential Information. The term "Confidential Information" shall mean all information related to the business, operations, financial information, computer software and systems of a party and

such other information that is disclosed by one party to the other party which is marked "confidential" by the disclosing party. Each party agrees (i) to exercise the same degree of care and protection (but no less than a reasonable degree of care and protection) with respect to the other party's Confidential Information as such party exercises with respect to its own Confidential Information; and (ii) except with the prior written consent of the disclosing party hereunder, not to, directly or indirectly, disclose, copy, transfer or allow access to any Confidential Information obtained from the other party or use any Confidential Information for any purpose other than in connection with providing Products and services pursuant to this Agreement. Notwithstanding the foregoing, you acknowledge and agree that the Products and the Software are the Confidential Information of Datacap. The following shall not be considered Confidential Information, and neither party bears any responsibility for safeguarding, the following: (a) information that is publicly available; (b) information already in the receiving party's possession, obtained by the receiving party from third parties without restrictions on disclosure; (c) information independently developed by receiving party without reference to the disclosing party's Confidential Information; or (d) information required to be disclosed by order of a court or other governmental entity.