

BANK CARD MERCHANT AGREEMENT TERMS AND CONDITIONS

These Bank Card Merchant Agreement Terms and Conditions (the “Terms and Conditions”) are part of the Bank Card Merchant Agreement by and between WORLDPAY CANADA CORPORATION, on behalf of itself and its affiliates (“Processor”) having its principal office at 5000 Yonge Street, Suite #900, Toronto, Ontario M2N 0A7, Canada, the Member Bank and the Merchant indicated on the Application. Processor, Member Bank and Merchant hereby agree as follows:

I. Processor and/or Member Bank participate in programs affiliated with VISA, MasterCard, American Express, Discover, and Other Networks which enable holders of Cards to purchase goods and services from selected merchants located in Canada by use of their Cards.

II. Merchant wishes to participate in the VISA, MasterCard, American Express, Discover, and the Other Networks systems at its Canadian locations by entering into transactions with Cardholders for the sale of goods and/or services through the use of Cards.

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual promises hereinafter set forth, the parties agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms shall have the meanings set forth below:

Account or Designated Account shall mean an open chequeing account designated by the Merchant at a financial institution acceptable to Processor which Processor can access per the terms of the Pre-Authorized Debit Agreement that is attached to and hereby made a part of this Agreement.

Account Change means a change in the Account or the financial institution where the Account is located.

Agreement, also referred to as the Bank Card Merchant Agreement means these Terms and Conditions, the Merchant Application, and PAD Agreement and each exhibit, schedule, and addendum attached hereto or referencing this Agreement, any amendments to any of them as well as all documents and other materials incorporated herein by reference.

American Express shall mean Amex Bank of Canada.

Application or Merchant Application means the physical/virtual form or the act of making application to Processor by providing information via an electronic document or web page user interface and includes the disclosure boxes labelled the Information Summary Box, Fee Disclosure Box and Other Fees Disclosure Box.

Association means VISA, MasterCard, American Express, Discover, or any Other Network, as the same are defined herein.

Authorization means a computerized function or a direct phone call to a designated number to examine individual transactions to obtain approval from the Card issuer to charge or debit the Card, as the case may be, for the amount of the sale.

Cardholder shall mean any person authorized to use a Card or accounts established in connection with a Card.

Cards(s) shall mean VISA, MasterCard, American Express, Discover, and/or Other Network cards, account numbers assigned to a Cardholder, or other methods of payment processed by Processor, which Merchant has indicated on the Application that it will accept and for which pricing is set forth in the Agreement.

Code of Conduct shall mean The Code of Conduct for the Debit and Credit Card Industry in Canada.

Data Incident shall mean any alleged or actual compromise, unauthorized access, disclosure, theft, or unauthorized use of Card or Cardholder information, regardless of cause, including without limitation, a breach of or intrusion into any system, or failure, malfunction, inadequacy, or error affecting any server, wherever located, or hardware or software of any system, through which Card information resides, passes through, and/or could have been compromised.

Discover shall mean Discover Financial Services, LLC.

Event of Default shall mean each event listed in Section 13.

Float-Event shall mean a circumstance where Processor, for whatever reason, advances settlement or any amounts and/or delays the assessment of any fees under this Agreement.

Force Majeure Event shall mean, labour disputes, fire, weather or other casualty, power outages, and funding delays, however caused, governmental orders or regulations, or any other cause, whether similar or dissimilar to the foregoing, beyond Processor’s reasonable control.

Initial-Term shall mean the Initial Term as identified on the Application; if no Initial Term is identified on the Application then the Initial Term shall be three (3) years.

Interac shall mean Interac Corp.

MasterCard shall mean MasterCard International, Inc.

Member-Bank shall mean a member of VISA, MasterCard and/or Other Networks, as applicable, that provides sponsorship services in connection with this Agreement. As of the commencement of this Agreement, the acquirer in respect of all networks other than Interac and Discover shall be Peoples Trust Company, a federal corporation incorporated pursuant to the *Trust and Loan Companies Act* (Canada) located at 888 Dunsmuir Street, Vancouver, BC, V6C 3K4 Canada, and the Member Bank in respect of Interac shall be Worldpay Canada Corporation on behalf of itself and its affiliates, 5000 Yonge Street, Suite #900, Toronto, Ontario M2N 0A7, Canada.

Merchant Supplier shall mean a third party other than Processor or Member Bank used by Merchant in connection with the Services received hereunder, including but not limited to, Merchant’s software providers, equipment providers, and/or third party processors.

MID shall mean the merchant identification number issued by Processor for each account through which Merchant receives the Services. Depending on the setup of Merchant’s account, one or more MIDs may be issued for each location where Merchant receives the Services.

Operating-Regulations means the by-laws, operating regulations and/or all other rules, policies and procedures of VISA, MasterCard, American Express, Discover, and/or Other Networks as in effect from time to time.

Other-Network(s) shall mean any network or card association other than VISA, MasterCard, American Express, or Discover that is identified in the and in which Merchant participates hereunder. The term Other Network includes Interac.

PCI-DSS shall mean the Payment Card Industry Data Security Standard.

Person is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, the government of a country or any political subdivision thereof, or any agency or department of any such government, and the executors, administrators or other legal representatives of an individual in such capacity.

Renewal Term has the meaning set out in Section 9.

Rules Summary means the document containing a summary of key Operating Regulations governing this Agreement as amended from time to time, which is incorporated into this Agreement by reference.

Service shall mean any and all services described in, and provided by Processor pursuant to, this Agreement.

Service Delivery Process means Processor’s then standard methods of communication, service and support, including but not limited to communication via an online Merchant portal, email communication, statement notices, other written communications, etc.

TID means the terminal identification number issued by Processor for each terminal, device, and/or payment application through which Merchant receives and uses the Services. Depending on the setup of Merchant's account and devices, one or more TIDs may be issued for each location where Merchant receives the Services.

VISA shall mean VISA International, Inc.

Voice Authorization means a call to a designated number to obtain credit approval on a transaction from the Card issuer, whether by voice or voice-activated systems.

Other defined terms and Services applicable to this Agreement will be contained in a "General Services Addendum" as described and/or set forth above. All dollar amounts referred to in this Agreement are in Canadian dollars unless otherwise indicated.

2. Rules Summary: Operating Regulations.

A. Services and General Services Addendum. Merchant acknowledges receipt and review of the Rules Summary, which are incorporated into this Agreement by reference. Merchant agrees to fully comply with all of the terms and obligations in the then current Rules Summary, as changed or updated by Processor from time to time, at Processor's sole reasonable discretion with notice in accordance with the Service Delivery Process. The Rules Summary is a summary of key Operating Regulations that govern this Agreement. In the event there is a change in the Rules Summary by Processor that is not related to or based on a corresponding Association rule or requirement, such provision will not be binding on Merchant. Merchant shall use the Services in compliance with, and subject to, the Operating Regulations. Without limiting the foregoing, Merchant agrees that it will fully comply with any and all confidentiality and security requirements of applicable privacy laws VISA, MasterCard, Discover, and Other Networks, including but not limited to PCI-DSS requirements, the VISA Cardholder Information Security Program, the MasterCard Site Data Protection Program, the American Express Data Security Requirements (DSR), and any other program or requirement that may be published and/or mandated by the Associations or Other Networks. Should any Operating Regulation(s) not be publicly available or otherwise made available to the Merchant, such unavailability shall not alter or limit Merchant's obligation to comply with the Operating Regulations. Notwithstanding Processor's assistance in understanding the Operating Regulations, Merchant expressly acknowledges and agrees that it is assuming the risk of compliance with all provisions of the Operating Regulations, regardless of whether Merchant has possession of those provisions. Visa, MasterCard, and American Express make excerpts of their respective Operating Regulations available on their internet sites. Merchant acknowledges responsibility for any liability resulting from its decision not to participate in optional Association programs, including but not limited to any increased Data Incident liability resulting from its decision not to participate in an Association EMV program. In the event Merchant chooses to participate in an optional Association program, including but not limited to an EMV program, Merchant acknowledges and agrees that it shall be responsible for (i) ensuring compliance with any applicable program requirements and/or Operating Regulations applicable to such program, including but not limited to making any updates to its point of sale equipment, and (ii) any cost associated with its participation in the applicable program, including any costs assessed to Merchant by Processor. Certain other Services applicable to this Agreement are contained in the General Services Addendum as may be published and modified from time to time by Processor and the parties agree that such addendum is incorporated into and made part of this Agreement and that such addendum shall apply only with respect to those Services actually provided by Processor and received by Merchant hereunder. Merchant acknowledges receipt and review of the General Services Addendum. In the event of a conflict between the fees set forth on the Merchant Application and the General Services Addendum, the Merchant Application shall control.

B. Processing Requirements. Merchant represents and warrants it is an entity validly existing under the federal laws of Canada or one of its provinces, or under the laws of a province or territory or Canada and that it is duly registered to carry on business in each jurisdiction where it carries on business.

C. Policing Card Transactions. Merchant will be solely responsible for policing, at the point of sale, the card type(s) of transactions it submits for processing by Processor. Should Merchant submit a transaction for processing for a card type it has indicated it does not wish to accept, Processor may process that transaction and Merchant will pay the applicable fees, charges, and assessments associated with that transaction.

D. Prohibited Merchants. The following are Persons prohibited from using the Services (each a "Prohibited Merchant"): (i) Persons who listed on the anti-terrorism financing list, maintained by Global Affairs Canada or its successor or replacement, pursuant to subsection 83.05(1) of the Criminal Code (the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism and United Nations Al-Qaida and Taliban Regulations) or other similar anti-terrorism financing legislation or regulation (each a "Canadian Listed Person"); (ii) Persons who appear on the U.S. Department of the Treasury, Office of Foreign Assets Control ("OFAC"), Specially Designated Nationals List (SDN); (iii) Persons who appear on the United Nations Consolidated Sanctions List; (iv) Persons who are less than 18 years of age; and (v) Persons, or their affiliates who have procured services from Processor and have been terminated for cause by Processor. Additionally, Merchant acknowledges that the receipt of Services under this Agreement is subject to certain sponsorship criteria established by Member Bank, which designates certain prohibited activities. Merchant acknowledges that Processor has relied on information provided by Merchant, including on any application, regarding its business and business practices ("Business Information"), and represents and warrants that the Business Information is and will remain true and accurate at all times. In the event there are changes to the Business Information, Merchant agrees that it will promptly notify Processor in writing. Following such notification, or following Processor's independent discover of a change to Merchant's Business Information, Processor has a right to change, modify, suspend, or terminate any or all of the Services.

3. Application; Background Checks and Change in Business. Merchant represents that all information supplied by Merchant in connection with its application or other request for services is complete and accurate. The preceding sentence is intended to inform Merchant of Processor's procedures and of Processor's responsibility under governing law. Merchant agrees to provide Processor with thirty (30) days prior written notice of Merchant's intent to change its business form or entity in any manner (e.g. a change from a limited liability company to a corporation), Merchant's intent to sell its stock or assets to another entity or any changes to the Account.

Processor may make, at any time, any credit inquiries which it may consider necessary to accept or review acceptance of the Merchant Agreement or investigate Merchant's ability to perform its obligations hereunder. Such inquiries may include, but are not limited to, a credit and/or criminal background check of the business, which may, if applicable, include its proprietor, partners, principal owners, shareholders or officers. Upon Processor's request, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made.

4. Card Acceptance. Merchant must accept all Cards and complete all Card transactions in accordance with the Operating Regulations. Merchant shall accept all Cards when properly presented by Cardholders in payment for goods or services, subject to applicable Operating Regulations and the Code of Conduct including but not limited to those requiring Merchant to elect whether to accept credit only, debit only or both debit and credit Cards. In the event Processor for whatever reason is unable to obtain, or due to system delays chooses not to wait to obtain, Authorization from an Association, Processor may at its option "stand-in" for such entities and authorize the sales transaction based on criteria established by Processor, and Merchant remains responsible for such sales transaction in accordance with this Agreement. Merchant has identified to Processor the products and/or services for which it intends to accept Cards as payment. Merchant agrees that it shall only complete and deliver to Processor sales transactions produced as the direct result of bona fide sales made by Merchant to Cardholders for such identified products and/or services, unless otherwise agreed by Processor in

writing. Merchant is responsible for the security of any Equipment (as defined below) or other terminals or devices and is liable for any unauthorized use of the Equipment, terminals, or other devices, regardless of whether the unauthorized use is attributable to Merchant's employees, agents, customers, or other third parties. Merchant may not require any Cardholder to pay any part of any discount rate or other charge imposed upon Merchant by the Merchant Agreement, whether through imposition of a price increase not imposed on cash paying customers or through imposition of any charges not imposed on cash paying customers. However, nothing herein shall prevent Merchant from offering (i) discounts to customers for cash purchases or (ii) differential discounts to customers among different Associations to the extent permitted by the Associations. Any discounts must be clearly marked at the point of sale where the transaction occurs. Merchant shall ensure that its access to the Services is monitored to prevent unauthorized access. Merchant may accept Cards only at locations approved by Processor in advance. Additional locations may be added subject to Processor's approval. Processor may delete any location by providing notice as provided herein. Merchant shall ensure that all transactions processed under this Agreement shall originate from original sales transactions within Canada; and without limiting the generality of the foregoing, in no event shall Merchant send a transaction record to Processor deemed by Processor or an Association to be originating from any country other than Canada.

5. Transaction Processing.

A. Sale Transactions. Processor or Member Bank will initiate payment to Merchant of the total face amount of each sale transaction acquired and accepted hereunder, subject to the terms and conditions of this Agreement, the Operating Regulations, and applicable law, after Processor or Member Bank, as applicable, receives payment for such sales transactions. Merchant acknowledges and agrees that Services may be performed by one or more affiliate of Processor, including Worldpay Canada Corporation. Unless otherwise agreed to in writing by Processor, Merchant shall electronically deliver to Processor and in a format acceptable to Processor all credit vouchers and sales transaction records within two (2) business days after the applicable transaction date (or such shorter period as determined by the applicable Association), except (i) in the case of a delayed merchandise delivery, when the sales transaction record shall be delivered within two (2) business days of the merchandise delivery or (ii) as specified otherwise in the Operating Regulations. Merchant agrees that it shall deliver sales transaction records to Processor at least every business day. The preparation and delivery to Processor by Merchant of sales transactions shall constitute an endorsement to Processor by Merchant of each sales transaction, and Merchant authorizes Processor or its representative to place Merchant's endorsement on any sales transaction at any time. Processor may refuse to acquire any sales transaction or claim the amount of which, in whole or in part, it could charge back to the Merchant pursuant to this Agreement, if it had acquired the sales transaction or claim. Merchant acknowledges and agrees that Processor is not responsible for any action or inaction taken by the financial institution or other entity that issued the Card(s) to the Cardholder or the processor of such Card(s). Merchant agrees that Processor may set off any amounts due to Processor from amounts owed to Merchant, including but not limited to any amounts owed to Merchant from Processor and/or any of its affiliate(s).

B. Conveyed Transactions. Where Merchant has a valid agreement in place with American Express or an Other Network for the acceptance of American Express' or the Other Network's cards, Merchant may submit a transaction on American Express or such Other Network to Processor for Processor to convey to American Express or the relevant Other Network. Payment of proceeds due to Merchant for a conveyed transaction will be governed by the agreement Merchant has with American Express or the Other Network, and Processor does not bear any responsibility for such American Express or Other Network, including, without limitation, the funding and settlement of Merchant's conveyed transactions. The fees payable for the conveyed transactions are set out on the Other Fees Disclosure Box in the Application.

6. Exception Items. Merchant agrees to reacquire and pay Processor the amount of any sales transaction, and Processor shall have the right at any time to charge Merchant's Account therefore with notice via Processor's Service Delivery Process, for any return, chargeback, compliance case, any other Association action, or if the extension of credit for merchandise sold or services or sales transactions performed was in violation of law or the rules or regulations of any governmental agency, federal, territorial, provincial, local or otherwise; or if Processor has not received payment for any sales transaction, notwithstanding Processor's prior payment to Merchant for such sales transaction pursuant to Section 5 above or any other section. Not limiting the generality of the foregoing, Merchant agrees that any operational and/or other Services performed on behalf of Merchant, including but not limited to, production of facsimile drafts in response to copy requests, response to compliance cases, augmentation of Merchant data for interchange, transaction stand-in, digital draft storage and retrieval, etc. shall in no way affect Merchant's obligations and liability in this Agreement including those in the foregoing sentence. Merchant may instruct Processor in the defense of chargebacks, compliance cases and similar actions, and Merchant agrees that it will promptly provide any such instructions to Processor. When Processor has determined it has all necessary information and instructions, Merchant hereby authorizes Processor to resolve chargebacks and respond to retrieval requests and other inquiries without further consulting Merchant. Where not prohibited by the Operating Regulations, Processor may report Merchant to Terminated Merchant File and the Merchant Alert to Control High Risk Merchants file maintained by an Association, and any Interac equivalent during or following the term.

7. Merchant Suppliers. Merchant may use one or more Merchant Suppliers in connection with the Services and/or the processing of some or all of its Card transactions. In no event shall Merchant use a Merchant Supplier unless such Merchant Supplier is compliant with PCI and/or the Payment Application Data Security Standard ("PA-DSS"), depending on the type of Merchant Supplier, as required by the Operating Regulations. Merchant acknowledges and agrees that Merchant shall cause its Merchant Supplier to complete any steps or certifications required by any Association (e.g., registrations, PA-DSS, PCI, audits, etc.). Merchant shall cause its Merchant Supplier to cooperate with Processor in completing any such steps or certifications (if applicable), and in performing any necessary due diligence on such Merchant Supplier. Merchant shall be solely responsible for any and all applicable fees, costs, expenses and liabilities associated with such steps, registrations, and certifications. Merchant shall bear all risk and responsibility for conducting Merchant's own due diligence regarding the fitness of any Merchant Supplier(s) for a particular purpose and for determining the extent of such Merchant Supplier's compliance with the Operating Regulations and applicable law. Merchant expressly agrees that Processor shall in no event be liable to Merchant or any third party for any actions or inactions of any Merchant Supplier used by Merchant, even if Processor introduced and/or recommended the use of such Merchant Supplier to Merchant, or never objected to the use of such Merchant Supplier, and Merchant hereby expressly assumes all such liability. If Merchant itself stores or processes Cardholder data, it shall comply with applicable PA-DSS.

8. Cardholder Information. Merchant shall not disclose, sell, purchase, provide, or exchange Cardholder name, address, account number or other information to any third party other than to Processor, Member Bank or an Association for the purpose of completing a sales transaction unless specifically permitted by the Operating Regulations. Merchant represents and warrants that neither it nor its Merchant Supplier shall retain or store any portion of the magnetic-stripe data subsequent to the Authorization of a sales transaction, nor any other data prohibited by the Operating Regulations and/or this Agreement. Merchant shall comply with all applicable privacy laws in respect of any personal Cardholder information collected or stored by Merchant and shall do so pursuant to a privacy policy that is readily available to Cardholders. Merchant expressly permits Processor to use third party suppliers in the delivery of Services that which collect, use and process information provided by Merchant hereunder in territories that are outside of Canada, provided that none of them shall be in territories that are subject to OFAC or Canadian Listed Person geographic sanctions. Merchant states that

it has obtained from Cardholders all necessary consents under applicable privacy laws for Processor, Member Bank and Association to collect, store, use and disclose Cardholder information necessary for the supply of the Services. Processor acknowledges responsibility for payment card data on its proprietary systems. Processor will (i) maintain its PCI-DSS certification and (ii) be validated as a PCI-DSS compliant service provider. In the event Processor is deemed not to be in compliance with PCI-DSS, Processor shall make commercially reasonable efforts to become compliant and maintain compliance thereafter. As of the execution of the Agreement, PCI-DSS information and standards can be found at the Payment Card Industry Security Council website at <https://www.pcisecuritystandards.org/index.htm>.

9. Term and Termination.

A. **Term.** The term of this Agreement shall commence on the earlier of: (i) the date Processor issues Merchant a processing ready merchant identification number; or (ii) the date Processor processes Merchant's first transaction and shall continue for the Initial Term as defined in Section 1 herein. Except as hereafter provided, unless either party gives written notice of non-renewal of the Agreement to the other party at least ninety (90) days prior to the expiration of any term (a "Non-Renewal Notice"), the Agreement including all addenda, schedules and exhibits hereto or referencing this Agreement shall be automatically extended for successive terms of six (6) months each.

B. **Termination.** Upon the timely delivery of a Non-Renewal Notice, this Agreement shall terminate upon the expiration of the applicable then current term. This Agreement may additionally be terminated by a party to this Agreement as specifically permitted in this Agreement. Furthermore, either Merchant or Processor may terminate this Agreement at any time, for convenience and without cause on thirty (30) days' written notice to the other party and where such termination for convenience is made, the liquidated damages set forth in Section 13 below shall apply except where such termination for convenience is made by Processor. All obligations of Merchant incurred or existing under this Agreement as of the date of termination, shall survive such termination.

10. Processor Fees.

A. **Fees.** Merchant agrees to pay Processor the fees, expenses and all other amounts set forth in the Agreement including, but not limited to, the Merchant Application. If any fees are blank or identified as not applicable on the Application, then Processor will assess Merchant Processor's standard fees for such transaction(s) or item(s). Processor may change or add fees and/or charges upon notice to Merchant via Processor's Service Delivery Process, and such fees and charge changes and/or additions shall be effective on no less than ninety (90) days' notice. In the event (i) Processor increases its fees or adds fees pursuant to the immediately preceding sentence ("Fee Change"), or (ii) Processor does not pass through the full savings from a reduction in applicable interchange rates ("Reduction Retention"), Merchant may terminate the Agreement without penalty or additional fee within 90 days of the date the Fee Change or Reduction Retention becomes effective. Processor has the right to round, assess, and calculate interchange and other fees and amounts and on return, chargeback and certain other transactions retain such amounts, in accordance with Processor's standard operating procedures. At Merchant's request, Processor may, in its sole discretion, establish multiple Merchant billing definitions on its system, and in such event Processor shall assess all applicable fees separately and independently with respect to each such billing definition. The Service of Process used by Processor to provide you monthly statements summarizing your transaction processing and fees may be via Processor's online Merchant portal and/or email and not by paper statement unless otherwise set forth on the Application.

B. **Transaction Fees and Discount Rates.** Transaction fees, also known as per item fees, are fees that may be charged on each pre-authorization, authorization, regular sale, captured sale, address verification, Card draft, credit draft, or other transaction type, regardless of the stated total ("Transaction Fee(s)"). Discount rates, also known as rates, are fees charged by multiplying the rate or other percentage and

the applicable transaction volume ("Discount Rate(s)"). Processor may charge a Transaction Fee and/or Discount Rate for any transaction activity.

C. **Association and Other Network Fees and Charges.** VISA, MasterCard, American Express, Discover, and Other Network Interchange fees, assessments, and other amounts will be either: (i) assessed to Merchant separate from and in addition to the Discount Rate, Transaction Fee, and other fees listed in the Application, or (ii) included in the Discount Rate and/or Transaction Fee listed in the Application. For Interac Card transactions, Processor will assess interchange fees, sponsorship fees, switch fees, gateway fees, Processor's Transaction Fee and other fees. Certain fees are available upon request or through the Associations. The Discount Rate, Transaction Fee and other fees may be based, in whole or in part, on interchange rates, assessments, and other fees that the Associations and Other Networks periodically change.

D. **Transaction Risk Fees.** Processor assesses Transaction Risk Fees on certain transactions that it determines carry a higher degree of risk. These higher-risk transactions may increase Processor's operational, monitoring, and/or compliance obligations and costs. Factors that influence whether a transaction will be subject to Transaction Risk Fees include whether it: (a) was key entered (i.e., the encoded card information was not read by a point of sale device); (b) was voice-authorized; (c) was not authorized; (d) was not transmitted to Processor for processing within 24 hours; (e) was a Consumer or Commercial Reward transaction, a Visa Signature transaction, or a MasterCard World Elite Card transaction; (f) was deemed a "Non-Qualifying" transaction by the Operating Regulations and/or Processor (e.g., certain foreign transactions or transactions from business, commercial, purchasing, or government Cards); (g) was difficult to capture; (h) was difficult to authorize; (i) was submitted incorrectly; and/or (j) was not eligible for the lowest interchange fee for any other reason. Additionally, Merchant's Card transactions may be subject to Transaction Risk Fees in instances where (1) its activities are outside the scope of or different from what was designated under Merchant's merchant category code or in the initial setup criteria used to establish the MID(s) associated with Merchant's account (e.g., Merchant's average ticket amount differs from what Processor used to calculate the Transaction Fee and/or Discount Rate, etc.); and/or (2) its terminal, software, or communications lines fail to function properly. The factors in this paragraph are not exhaustive and may change from time to time. The Associations require that information from the original authorization, including a lifecycle identifier, be retained and returned with subsequent authorizations and/or the settled transaction data; the Associations validate this information as part of the clearing and settlement process. If authorization data is not retained and returned at settlement, then the transaction will not clear as priced and will incur Transaction Risk Fees.

E. **Tiered Transaction Pricing.** A tiered transaction is assessed a Qualified, Mid-Qualified, Non-Qualified, or High-Risk Transaction Fee and Discount Rate, which is primarily based on interchange classifications under the Operating Regulations, but may depend on other factors. Merchant may be able to avoid processing certain non-qualified transactions by using a product established by the Associations that supports authorization and market data requirements. Processor does not guarantee that Merchant's transactions will qualify for any given rate, and Processor has no liability for a transaction's failure to so qualify. In addition, Card transactions that do not meet the necessary criteria for payment are subject to complete denial, reversal and/or chargeback. The items listed in this Section are not intended to be a comprehensive list of all instances in which a transaction may not qualify as fully qualified.

F. **Fees Related to PCI DSS and Data Breach Events.** Processor reserve the right to charge Merchant a reasonable fee if: (i) an Association or Network reports an account data compromise, common point of purchase event, or other data breach event at Merchant's location, or (ii) Processor reasonably believe Merchant is not fully compliant with the Rules Summary, Operating Regulations, Payment Card Industry Data Security Standard ("PCI DSS") or any applicable laws, or if Merchant fail to prove compliance upon Processor's request.

This fee will be in addition to any other amounts payable under the Agreement. Processor may also assess Merchant a separate PCI DSS compliance fee in connection with Merchant's enrollment in a Merchant PCI program Processor facilitate to provide compliance support with the PCI DSS. Processor may also assess Merchant a PCI DSS non-validation fee until Merchant demonstrate PCI DSS compliance and provide Processor supporting validation documentation. Further, the Security Services terms and conditions in Addendum A, General Services Addendum applies hereto.

11. Third Party Assessments. Notwithstanding any other provision of this Agreement, Merchant shall be responsible for all amounts imposed or assessed to Merchant, Processor, and/or Member Bank in connection with this Agreement by Member Bank and/or third parties such as, but not limited to, Associations and Merchant Suppliers (including telecommunication companies), to the extent that such amounts are not the direct result of the gross negligence or willful misconduct of Processor. Such amounts include, but are not limited to, fees, fines, assessments, sponsorship fees, penalties, loss allocations, etc. Any changes or increases in such amounts shall automatically become effective upon notice to Merchant via Processor's Service Delivery Process and shall be immediately payable by Merchant when assessed by Processor. In the event of a Float Event, Processor reserves the right to assess to Merchant, and Merchant shall pay to Processor, a cost of funds associated with the Float Event (which Processor may at its option assess as a transaction surcharge), the amount of which shall be determined by Processor in its reasonable discretion, and which may be changed by Processor from time to time (but in no event shall amount to more than a rate of 12% per annum), and such cost of funds shall be effective as of the start of the Float Event and shall be immediately payable by Merchant when assessed by Processor. Processor reserves the right to impose any amounts described in this Section on an allocation basis, which may include the establishment of a minimum fee for certain Association fees, fines, and/or other amounts (e.g., fallback transactions, etc.).

12. Exclusivity. Processor and Member Bank reserve the right to enter into other agreements pertaining to the Services with others including without limitation other merchants. The parties agree that Merchant shall exclusively receive the Services from Processor at all of its locations; Merchant shall not contract with a third party to procure services that are similar or competitive with the Services.

13. Default. The following events shall be considered an "Event of Default":

- (i) Merchant becomes subject to any voluntary or involuntary bankruptcy, insolvency, winding-up, reorganization or liquidation proceeding, a receiver is appointed for Merchant, or Merchant makes an assignment for the benefit of creditors, or admits its inability to pay its debts as they become due; or
- (ii) Merchant fails to pay or reimburse the fees, expenses or charges referenced herein when they become due; or
- (iii) Merchant is in default of any terms or conditions of this Agreement whether by reason of its own action or inaction or that of another; or
- (iv) Processor reasonably believes that there has been a material deterioration in Merchant's financial condition; or
- (v) any standby letter of credit, if and as may be required pursuant to Section 20, will be cancelled, will not be renewed, or is not in full force and effect; or
- (vi) Merchant ceases to do business as a going concern, or there is a change in ownership of Merchant which changes the identity of any person or entity having, directly or indirectly, more than 30% of either the legal or beneficial ownership of Merchant; or
- (vii) Merchant revokes the Pre-Authorized Debit Agreement. Where this Agreement is terminated, including pursuant to this Section 13, Merchant will remain responsible for paying any amounts owed to Processor under this Agreement and the terms of this Agreement will remain in effect for any transactions submitted to Processor through the termination date. Without limiting the generality of the foregoing, Processor's right to debit the Account will survive termination until such time as all credits and debits permitted by this Agreement and the PAD Agreement have been made.

Upon the occurrence of an Event of Default, Processor may at any time thereafter terminate this Agreement by giving Merchant written notice thereof. However, except in instances where immediate termination is required by any Association or if Member Bank and/or Processor reasonably believe that the Event of Default poses material risk to either of them or involves a violation of applicable law, Merchant will have 30 days following Processor's notice to cure an Event of Default under Section (ii), (iii), (iv) or (v) prior to termination under this section. Termination of Merchant for any reason shall not relieve Merchant from any liability or obligation to Processor. If, prior to the date on which the then current term of this Agreement is scheduled to expire, either this Agreement is terminated by Processor as specifically permitted by this Agreement (except for a termination for convenience by Processor as set forth in Section 9.B herein), or Merchant for any reason discontinues receiving the Services from Processor (except as may be specifically permitted by this Agreement but excluding a termination for convenience by Merchant as set forth in Section 9.B herein), Merchant shall be liable to Processor for liquidated damages in an amount equal to the average monthly revenue (which does not include interchange and other Association fees) payable to Processor as a result of this Agreement for the three calendar months in which such revenue was the highest during the preceding 12 calendar months, or such shorter period if this Agreement has not been in effect for 12 months, multiplied by the number of months remaining during the then current term of this Agreement. Merchant recognizes and agrees that the liquidated damages are fair and reasonable because it is not possible to establish the actual increase in volume and activity by Merchant during the term of this Agreement. Merchant shall also reimburse Processor for any damage, loss or expense incurred by Processor as a result of a breach by Merchant, including any damages set forth in any addendum and/or schedule and/or exhibit hereto and including all past due, unpaid and/or future invoices for services rendered by Processor in connection with this Agreement. All such amounts shall be due and payable by Merchant upon demand. Processor shall also have the option to require Merchant to reacquire all outstanding sales transactions acquired by Processor hereunder. In addition to, and not in limitation of the foregoing, Processor may refuse to provide the Services in the event it has not been paid for the Services as provided herein.

14. Processor Nonperformance: In the event Merchant, in good faith, reasonably believes that Processor has substantially failed to provide the Services, other than as a result of (i) a failure by Merchant (or any Merchant Supplier, or other third party acting at the request of or on behalf of Merchant) to perform any obligation under the Agreement, or to provide accurate data to Processor upon which Processor is dependent to provide accurate and timely Services to Merchant, or (ii) any Force Majeure Event, Merchant agrees to notify Processor in writing within 30 days of the date upon which such failure first occurred. Merchant agrees that such notice shall be sent in accordance with the terms of this Agreement, and shall specifically describe the nature of such failure by Processor, specify the date such failure first occurred and specifically reference this section.

Processor will attempt to resolve such failure within thirty (30) days of Processor's actual receipt of such notice from Merchant. Should Processor not resolve such failure within the cure period described in the foregoing sentence, Merchant may terminate this Agreement upon ninety (90) days prior written notice to Processor, provided Processor actually receives such notice of termination within thirty (30) days after the end of such cure period.

15. Taxes. All fees, charges, and expenses payable by Merchant under this Agreement associated with the Services are exclusive of valued-added tax (VAT), including but not limited to, goods and services tax (GST) and harmonized sales tax (HST) plus any other applicable sales, use, excise or other taxes that may apply hereto under applicable federal, provincial, and local laws and regulations (individually and collectively, "Taxes"). Any Taxes payable in respect of the Services provided or payments made under this Agreement, other than taxes payable on Processor's net income, profits, or gains, even where Processor and Merchant may be jointly liable to a tax authority for such Taxes, will be payable by and an obligation solely of Merchant. Processor may, but shall not have the obligation to, pay any such Taxes.

In the event Processor pays any Taxes owed by Merchant under this Agreement, Merchant shall immediately indemnify Processor against, and reimburse Processor or Processor may, at Processor's sole option, charge Merchant's Account, for such amounts. In the event a tax authority requires information of Processor in relation to the Merchant and/or transactions processed under this Agreement then the Merchant hereby agrees that Processor may provide such information and Merchant agrees to provide Processor with its tax identification details on request.

16. Binding on Successors; Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors, transferees and assignees. Processor and/or Member Bank have a right to assign this Agreement. Neither this Agreement nor any interest herein may directly or indirectly be transferred or assigned by Merchant, in whole or in part, without the prior written consent of Processor, which will not be unreasonably delayed or withheld. Merchant will remain liable for any amounts owed under this Agreement after an unauthorized transfer or assignment by Merchant, even if Processor continues to provide Services to such transferee or assignee. This Agreement is for the benefit of, and may be enforced only by, Processor and Merchant and their respective successors and permitted transferees and assignees, and is not for the benefit of, and may not be enforced by, any third party.

17. Notices. Subject to Section 40, all notices, requests, demands and other communications to be delivered hereunder unless specified otherwise herein shall be in writing and shall be delivered by nationally recognized overnight carrier, registered or certified mail, postage prepaid, to the following addresses:

- (i) if to Processor: Worldpay Canada Corporation, 5000 Yonge Street, Suite #900, Toronto, Ontario M2N 0A7, Canada
- (ii) if to Member Bank: Peoples Trust Company, 1400-888 Dunsmuir Street, Vancouver, BC V6C 3K4 Canada;
- (iii) if to Merchant: to the Merchant address provided in the Application, Attention President/Owner; or to such other address or to such other person as either party shall have last designated by written notice to the other party.

Notices, etc., so delivered shall be deemed given upon receipt.

18. Unenforceable Provision. If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

19. Payment. Merchant shall always maintain an open Account. Merchant authorizes Processor to (i) debit and/or credit the Account to settle any and all fees and other amounts due Processor under this Agreement, and (ii) debit the Account in accordance with the Merchant's pre-authorized debit agreement ("PAD Agreement"). Merchant shall always maintain the Account with sufficient cleared funds to meet its obligations under this Agreement. In the event Merchant desires an Account Change, Merchant shall give Processor thirty (30) days prior written notice in accordance with the provisions of Section 17 of any such change, and Processor shall use reasonable commercial efforts to effect such Account Change; however, such Account Change shall not be effective until the date on which Processor actually makes such Account Change on Processor's system. In no event shall Processor have any liability for any amounts directed to an Account that has been designated by any purported representative of Merchant or its Merchant Supplier at any time during the term of this Agreement, regardless of any Account Change. All amounts due Processor under this Agreement shall be paid without set-off or deduction, and shall be due from Merchant as of the date that they become due under this Agreement. Any fees not collected from Merchant by Processor when due shall bear interest at 12% per year but in no event more than the highest rate permitted by law. The acceptance by Processor, Processor's affiliate or other financial institution of Merchant's closing (or termination of) its Account shall not constitute a mutually agreed upon termination of this Agreement. Without

limiting the generality of any other provision of this Agreement, Processor and/or Member Bank are hereby authorized by Merchant to charge amounts due under this Agreement i) against each day's sales transactions ii) against any reserve; or iii) debiting the Merchant's Account in accordance with the PAD Agreement.

20. Reserve; Letter of Credit. As a specifically bargained for inducement for Processor to enter into this Agreement with Merchant, Processor at its option reserves the right to i) establish from amounts payable to Merchant hereunder, and/or cause Merchant to pay to Processor, a reserve of funds satisfactory to Processor to cover actual or anticipated fees, liabilities, chargebacks, returns and any other applicable assessments incurred or expected to be incurred by Processor or Member Bank related to the Services provided to Merchant; and/or ii) require Merchant to establish an irrevocable standby letter of credit, including additional and/or replacement letters of credit if required by Processor, with a beneficiary designated by Processor, and which are issued from a financial institution other than Member Bank or any of its affiliates, that is acceptable to Processor, in a format, with an expiration date, and in an amount acceptable to Processor in its sole discretion. The reserve funds established hereunder ("Reserve Account"), if any, shall be held in Member Bank's name and the funds therein shall be the sole and exclusive property of such Member Bank. In the event Merchant fails to establish, for any reason whatsoever, a reserve and/or a letter of credit as required above, Processor shall have all of the rights and remedies available to Processor in this Agreement, including but not limited to exercising the rights and remedies of Processor in Section 13. In the event Processor exercises its right to establish a reserve or require a letter of credit pursuant to this Section, Merchant may, subject to the following provisions, terminate the Agreement upon thirty (30) days advance written notice to Processor provided Processor receives such written notice from Merchant of its intention to so terminate within ninety (90) days of the date on which Processor establishes the reserve or requires the letter of credit. Upon Processor's receipt of Merchant's written notice pursuant to the immediately preceding sentence, Processor may, at its option, return the reserve to Merchant or waive the requirement for a letter of credit, and, in the event Processor elects to return the reserve to Merchant or waive the requirement for a letter of credit, Merchant shall not have the right to terminate this Agreement pursuant to this Section and this Agreement shall remain in full force and effect notwithstanding Merchant's written notice to terminate.

Merchant shall not sell, assign, transfer or encumber all or any part of its interest in the Reserve Account, if any, or any present or future rights under this Agreement, including but not limited to, Merchant's right to receive any payments or funds. Neither Processor nor Member Bank shall be obligated to honor any such purported attempt to sell, assign, transfer or encumber such interest, rights, payments or funds unless both Processor and Member Bank consent in writing. In the event Merchant breaches this paragraph, then, in addition to any other rights and remedies Processor may have under this Agreement and otherwise, Processor shall have the right, at its option, to withhold any or all funds or payments which would otherwise be payable to Merchant under this Agreement until it shall have received instructions concerning the disposition of such payments or funds, satisfactory in form and substance to Processor and signed by both Merchant and any purported assignee. Merchant shall indemnify Processor and hold it harmless from and against any and all claims, liabilities and damages which may be asserted against Processor by any purported assignee or any other person arising out of Merchant's purported sale, assignment, transfer or encumbrance of all or any of Merchant's present or future rights under this Agreement. Without limitation, this provision shall survive termination of this Agreement.

21. Indemnification.

A. Processor Indemnification Obligation. Subject to the other limitations, terms and conditions of this Agreement, Processor shall indemnify, defend, and hold harmless Merchant, and its directors, officers, employees, affiliates and agents from and against all third party proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Merchant, its

directors, officers, employees, affiliates and agents to the extent resulting from or arising out of Processor's gross negligence, or willful misconduct.

B. Merchant Indemnification Obligation. Merchant shall indemnify, defend, and hold harmless Processor, and its directors, officers, employees, affiliates and agents from and against all proceedings, claims, losses, damages, demands, liabilities and expenses whatsoever, including all reasonable legal and accounting fees and expenses and all reasonable collection costs, incurred by Processor, its directors, officers, employees, affiliates and agents resulting from or arising out of the Services in this Agreement, Merchant's processing activities, the business of Merchant or its customers, any sales transaction acquired by Processor, any noncompliance with the Operating Regulations (or any rules or regulations promulgated by or in conjunction with the Associations) by Merchant or its agent (including any Merchant Supplier), any Data Incident, any infiltration, hack, breach, or violation of the processing system of Merchant, its Merchant Supplier, or any other third party processor or system, or by reason of any breach or nonperformance of any provision of this Agreement on the part of the Merchant, or its employees, agents, Merchant Suppliers, or customers. Merchant enrollment in Processor's Breach Assist Program only reduces Merchant's indemnification obligations under this Agreement by the amount actually recovered by Processor in connection with the Breach Assist Program, and only to the extent the recovered amounts specifically relate to a data breach solely involving Merchant. The Breach Assist Program's limited indemnity waiver may not cover all the costs associated with a data breach. Merchant may review the specific terms and conditions of the Breach Assist Program at <https://www.royalgroupservices.com/breach-assist/> or by contacting a customer service representative at 1-800-846-4472.

C. Survival and Indemnification Procedures. The indemnification of each party shall survive the termination of the Agreement. The indemnified party shall (i) provide prompt written notice of any claim to the indemnifying party; (ii) cooperate with all reasonable requests of the indemnifying party; and (iii) surrender exclusive control of the defense and settlement of any third party claim to the indemnifying party provided that the indemnifying party will obtain the indemnified party's written consent prior to agreeing to any settlement or agreement that requires the indemnified party to make any admission of fault or to pay any amounts in connection with such settlement or agreement that are not fully paid for by the indemnifying party. The indemnified party shall not unreasonably withhold or delay any consent required under this Section. The indemnified party may elect to participate in the action with an attorney of its own choice at its own expense.

22. Review of Settlement Activity and Reports; Notice of Failure by Processor. Merchant agrees that it shall review all reports, notices, and invoices prepared by Processor or its agent and made available to Merchant, including but not limited to reports, notices, statements, and invoices provided via Processor's online reporting tool. Processor reserves the right to send some or all of the reports, statements, and/or invoices and/or notices of any pricing changes permitted under this Agreement via communication methods utilized as components of its Service Delivery Process which method Processor may change from time to time with notice via Processor's Service Delivery Process. Merchant expressly agrees that Merchant's failure to notify Processor that Merchant has not received any settlement funds within five (5) business days from the date that settlement was due to occur, or fails to reject any report, notice, or invoice within thirty (30) business days from the date the report or invoice is made available to Merchant, shall constitute Merchant's acceptance of the same. In the event Merchant believes that Processor has failed in any way to provide the Services, Merchant agrees to provide Processor with written notice, specifically detailing any alleged failure, within thirty (30) days of the date on which the alleged failure first occurred.

23. Choice of Law; Jurisdiction; Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of Ontario and the laws of Canada applicable therein without regard to conflicts of law provisions other than the grant of the Hypothec (defined below in Section 37), which shall be governed by, construed and enforced in accordance with the laws of Quebec and the laws of Canada

applicable therein. The parties hereby, including any Guarantor(s), agree to submit to the jurisdiction of Ontario for any action or proceeding arising out of or in any way relating to this Agreement, and/or pertaining in any way to the relationship between Merchant, Processor, Member Bank and any Guarantor(s). THE PARTIES HERETO, including any Guarantor(s), HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY MATTER UNDER, RELATED TO, OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTIONS OR RELATIONSHIPS CONTEMPLATED HEREBY. Without limitation, this provision shall survive termination of this Agreement.

24. Limit of Liability; Force Majeure.

A. Disclaimer of Warranties. EXCEPT FOR THOSE EXPRESS WARRANTIES MADE IN THIS AGREEMENT, PROCESSOR AND MEMBER BANK DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. MERCHANT HEREBY ACKNOWLEDGES THAT THERE ARE RISKS ASSOCIATED WITH THE ACCEPTANCE OF CARDS AND MERCHANT HEREBY ASSUMES ALL SUCH RISKS EXCEPT AS MAY BE EXPRESSLY SET FORTH HEREIN.

B. Consequential Damages. Without limiting the foregoing, no party shall be liable for lost profits, lost business or any incidental, special, consequential or punitive damages (whether or not arising out of circumstances known or foreseeable by the other party) suffered by such party, its customers, or any third party in connection with the Services provided hereunder or otherwise. However, nothing in the foregoing sentence is in any way intended, and shall not be construed, to limit (i) Merchant's obligation to pay any fees, assessments or penalties due under this Agreement, including but not limited to those imposed by telecommunications services providers, VISA, MasterCard, American Express and/or Other Networks; or (ii) any damages due from Merchant related to an early termination of this Agreement; or (iii) any damages due from Merchant related to the failure by Merchant to exclusively receive the Services from Processor to the extent required by the Agreement, and/or (iv) Merchant's obligation to indemnify Processor pursuant to Section 21. In no event shall Processor be liable for any damages or losses (i) that are wholly or partially caused by the Merchant, or its employees, agents, or Merchant Suppliers that should have been reported to Processor pursuant to Section 22, (ii) that first occurred, whether or not discovered by Merchant, more than thirty (30) days prior to Processor's receipt of written notice from Merchant or (iii) that were caused due to errors in data provided by Merchant or another Merchant Supplier to Processor.

C. Limitation of Liability. Processor's liability related to or arising out of this Agreement shall in no event exceed an amount equal to the lesser of (i) actual monetary damages incurred by Merchant or (ii) fees paid to and retained by Processor for the particular Services in question for the three calendar months immediately preceding the date on which Processor received a written notice from Merchant detailing Processor's material nonperformance under this Agreement. For avoidance of doubt, the cap on Processor's liability set forth in the immediately preceding sentence will not limit Processor's obligation to settle funds due to Merchant under this Agreement.

D. Force Majeure Events. Processor shall not be deemed to be in default under this Agreement or liable for any delay or loss in the performance, failure to perform, or interruption of any Services to the extent resulting from a Force Majeure Event. Upon such an occurrence, performance by Processor shall be excused until the cause for the delay has been removed and the Processor has had a reasonable time to again provide the Services. No cause of action, regardless of form, shall be brought by either party more than 1 year after the cause of action arose, other than one for the nonpayment of fees and amounts due Processor under this Agreement. Any restriction on Processor's liability under this Agreement shall apply in the same manner to Member Bank. In the event that Merchant has a claim against Member Bank in connection with the Services provided under this Agreement, Merchant shall proceed against Processor (subject to the limitations and restrictions herein), and not

against Member Bank, unless otherwise specifically required by the Operating Regulations.

E. Survival and Reasonableness of Limitations of Liability. Without limitation, this provision shall survive termination of this Agreement and Processor and Merchant recognize and agree that any limitations of liability set forth in this Agreement are fair and reasonable.

25. Controlling Documents. This Agreement (including all addenda and schedules and exhibits hereto and all documents and materials referenced herein) supersedes any and all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof, and sets forth the complete and exclusive agreement between the parties with respect to the Services and, unless specifically provided for herein, other services are not included as part of this Agreement. If there is a conflict between the Bank Card Merchant Agreement and an addendum or schedule or exhibit hereto, the addendum or schedule or exhibit shall control. If there is a conflict between the Rules Summary and this Agreement, the Rules Summary shall control. If there is a conflict between Operating Regulations and this Agreement, the Operating Regulations shall control. If there is a conflict between the Operating Regulations and the Rules Summary, the Operating Regulations shall control.

26. Regulatory Remedial Right. Processor may suspend or cease providing any Service in this Agreement if: (i) in Processor's reasonable opinion, such Service, or the business of Merchant, violates or would violate the Operating Regulations, or any federal, provincial or local statute or ordinance, or any regulation, order or directive of any governmental agency or court; (ii) Merchant is accused by any federal, provincial or local jurisdiction of a violation of any applicable statute or ordinance or any regulation, order or directive of any governmental agency or court, or if Processor reasonably believes, based upon the opinion of its legal counsel, that Merchant may be in violation of any of the foregoing; and/or (iii) in Processor's reasonable opinion, Merchant's activities may result in increased regulatory scrutiny or reputational harm. Processor may also suspend or cease providing any Service in this Agreement to Merchant if directed to do so by Member Bank. Should Merchant not process sales transactions through Processor's system for a period of one year or more, Processor may remove Merchant from Processor's systems without notice, without relieving Merchant from any of Merchant's obligations under this Agreement.

27. Conversion; Deconversion. Merchant shall take all necessary steps to, and shall, promptly convert to Processor's system for the Services in this Agreement not later than ninety (90) days after the execution of this Agreement by Processor. Processor agrees that it shall not charge Merchant for Processor's standard and customary internal testing and conversion preparation only, in connection with Merchant's initial conversion to Processor's system at the commencement of this Agreement, and as determined by Processor in its sole reasonable discretion. The foregoing shall not be deemed to limit Merchant's obligation to pay any third party fees and expenses incurred by Processor in connection with Merchant's conversion, which shall remain the sole responsibility of Merchant. Merchant agrees to be responsible for all direct and indirect costs (including but not limited to those incurred by Processor, its affiliates and/or agents) in connection with and/or related to Merchant's conversion from Processor at the termination of this Agreement and/or related to any conversion or programming effort affecting the Services after Merchant's initial conversion to Processor.

28. Confidential Information.

A. Confidential Information Supplied by Processor. Merchant acknowledges that Processor will be providing Merchant with certain confidential information, including but not limited to, this Agreement, third party audit reports, and information relating to the finances, systems, methods, techniques, programs, devices and operations of Processor and/or the Associations. Merchant shall not disclose any such confidential information, including any confidential information of (or that relates to) Member Bank, to any person or entity (other than to those employees and Merchant Suppliers of Merchant who participate directly in the performance of this Agreement and need access to such

information) and shall not use any such confidential information other than as necessary for the performance of this Agreement.

B. Confidential Information Supplied by Merchant. Processor acknowledges that Merchant will be providing Processor with certain confidential information, including information relating to the methods, techniques, programs, devices and operations of Merchant. Such confidential information does not include transaction information which has been de-identified or aggregated. Processor will not disclose confidential and proprietary information about Merchant to any person or entity (other than to Member Bank and those employees and agents of Processor who participate directly in the performance of this Agreement and need access to such information). Merchant acknowledges receipt of Processor's privacy notice ("Privacy Notice"). Merchant should direct any questions or requests for another copy of the Privacy Notice to a Processor customer service representative or Merchant's primary relationship manager, if applicable. Notwithstanding anything to the contrary in the Privacy Notice or this Agreement, Processor may use, disclose, share, and retain any information provided by Merchant and/or arising out of the Services, during the term and thereafter, (a) with Merchant's franchisor, Merchant's franchisee(s), association(s) to which Merchant belongs and/or belonged as of the commencement of this Agreement, (b) with any affiliate of Merchant; (c) in response to subpoenas, warrants, court orders or other legal processes; (d) in response to requests from law enforcement agencies or government entities; (e) to comply with applicable laws, regulations, or Operating Regulations; (f) with Processor's affiliates, partners and agents; (g) to perform analytic services for Merchant, Processor and/or others including but not limited to analyzing, tracking, and comparing transaction and other data to develop and provide insights for such parties as well as for developing, marketing, maintaining and/or improving Processor's products and services; and/or (h) to offer or provide the Services hereunder. Without limitation, this provision shall survive termination of this Agreement.

C. Miscellaneous. The parties acknowledge that the injury that would be sustained by the party disclosing information as a result of the violation of this Section 28 cannot be compensated solely by money damages, and therefore agrees that the disclosing party shall be entitled to seek injunctive relief and any other remedies as may be available at law or in equity in the event of a violation of the provisions contained in this Section 28. The restrictions contained in this Section 28 shall not apply to any information which becomes a matter of public knowledge, other than through a violation of this Agreement or other agreements between the parties.

D. Publicity. Merchant and Processor agree that they will work together to issue a mutually agreeable joint press release after the execution of this agreement and/or after the conversion of Merchant to Processor's Services. In any event, Merchant acknowledges and agrees that Processor may make public the execution of this Agreement by Merchant and/or any of Merchant's affiliates, and/or the Services that may be or have been provided under the Agreement. Merchant agrees that Processor may include Merchant's name and logo on a list of Processor's customers, which may be made public. Merchant agrees that, upon Processor's request, Merchant will provide testimonial information related to the Services received by Merchant hereunder.

29. Financial Statements. If at any time Merchant is not a publicly traded company, Merchant shall provide Processor with an audited financial statement for Merchant's most recent fiscal year end and/or quarterly financial statements prepared and certified by Merchant's chief financial officer within fifteen (15) days of Processor's request therefore. Any financial statements provided hereunder must be prepared in accordance with applicable general accepted accounting principles ("GAAP").

30. No Waiver. If either party waives in writing an unsatisfied condition, representation, warranty, undertaking or agreement (or portion thereof) set forth herein, the waiving party shall thereafter be barred from recovering, and thereafter shall not seek to recover, any damages, claims, losses, liabilities or expenses, including, without limitation, legal and other expenses, from the other party in respect of the matter or

matters so waived. Except as otherwise specifically provided for in this Agreement, the failure of any party to promptly enforce its rights herein shall not be construed to be a waiver of such rights unless agreed to in writing. Any rights and remedies specifically provided for in any addendum or schedule or exhibit are in addition to those rights and remedies set forth in this Agreement and/or available to Processor at law or in equity.

31. Compliance with Law. Merchant represents and warrants to Processor that it will comply with all applicable federal, provincial, and local laws and regulations in connection with Merchant's receipt of the Services and/or applicable to Merchant's business operations, the Code of Conduct, the Rules Summary, the Operating Regulations, applicable PCI-DSS, VISA, MasterCard, American Express, Discover, and/or Other Networks, the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), the *Criminal Code* (Canada), the *United Nations Act*, the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (Canada) and the *United Nations Al-Qaida and Taliban Regulations* (Canada) promulgated under the *United Nations Act*, and other applicable anti-money laundering, anti-terrorist financing, government sanction and know your client laws, including any rules, regulations, directives, guidelines or orders promulgated, issued or enforced thereunder, whether within Canada or elsewhere, all as amended, supplemented or replaced from time to time. Processor will comply with federal, provincial and local laws and regulations applicable directly to Processor in its provision of the Services.

32. Security, Data Incidents. Merchant will be solely responsible for the security, quality, accuracy, and adequacy of all transactions and information supplied hereunder, and will establish and maintain adequate audit controls to monitor the security, quality, maintenance, and delivery of such data. Without limiting the generality of the foregoing, Merchant represents and warrants to Processor that it has implemented and will maintain secure systems for maintaining and processing information and for transmitting information to Processor. Processor shall have no liability whatsoever for the security or availability of any communications connection used in connection with the Services provided hereunder. Merchant acknowledges that Processor is responsible only for the security of its own proprietary systems, and not for the systems of any third party, including without limitation any Merchant Supplier of Merchant. Merchant shall notify Processor immediately if Merchant becomes aware of or suspects a Data Incident. Merchant agrees to fully cooperate with Processor and any Association with respect to any investigation and/or additional requirements related to a suspected Data Incident.

33. Audits. At any reasonable time upon reasonable notice to Merchant, Merchant shall allow auditors, including the auditors of any Association or any third party designated by Processor or the applicable Association, to review the files held and the procedures followed by Merchant at any or all of Merchant's offices or places of business. Should Processor conduct an audit which is not required by the Operating Regulations or is not requested by an Association, such audit will be at Processor's sole expense; otherwise the audit shall be at Merchant's expense. Merchant will assist such auditors as may be necessary for them to complete their audit. In the event that a third-party audit is requested by an Association, and/or required by the Operating Regulations, Processor may, at its option, and at Merchant's sole expense, either retain a third party to perform the audit, or require that Merchant directly retain a specific third party auditor. If Processor requires that Merchant directly retain the auditor, Merchant shall arrange immediately for such audit to be performed and will provide Processor and the Associations with a copy of any final audit report. Without limitation, this provision shall survive termination of this Agreement with respect to matters arising on or before termination of this Agreement.

34. System Requirements and Upgrades. Merchant agrees that the Services shall be provided in accordance with Processor's then current systems, standards and procedures and that Processor shall not be required to perform any special programming, to provide any special hardware or software or to implement any other system, program or procedure for Merchant. Unless otherwise agreed in writing by Processor, all sales transaction, settlement and other data and

information used in connection with the Services shall be provided to Processor in Processor's then current data formats and by means of Processor's then current telecommunications configurations and protocols. Processor may make changes in the Services based upon, but not limited to, technological developments, legislative or regulatory changes, or the introduction of new services by Processor. Merchant shall comply with all time deadlines, equipment and software maintenance and upgrading requirements to the extent required by the Associations and/or Operating Regulations. Merchant shall use best efforts to comply with all other time deadlines, equipment and software maintenance and upgrading requirements which Processor may reasonably impose on Merchant from time to time.

35. Title to the Services. Merchant agrees it is acquiring only a nontransferable, non-exclusive right to use the Services. Processor shall at all times retain exclusive title to the Services, including without limitation, any materials delivered to Merchant hereunder and any invention, development, product, trade name, trademark, service mark, software program, or derivative thereof, developed in connection with providing the Services or during the term of this Agreement.

36. Acceptance of Debit Cards. Merchant will be solely responsible for policing, at the point of sale, the card type(s) of transactions it submits for processing by Processor. Merchant may choose to accept only credit or debit payments from an Association without having to accept both. Should Merchant submit a transaction for processing for a card type it elected not to accept, Processor may process that transaction and Merchant will pay the applicable fees, charges, and assessments associated with that transaction. For Merchant's convenience, a general description of certain credit, debit, and commercial VISA/MasterCard card types are:

- a. Consumer Credit - a consumer credit card; this category does not include VISA or MasterCard branded signature-based debit cards.
- b. Consumer Debit - a VISA or MasterCard branded signature-based debit card (including certain stored-value and prepaid cards).
- c. Commercial - a VISA or MasterCard branded credit card that bears the descriptive term "Business Card", "Corporate Card", "Purchasing Card", "Fleet Card", or similar descriptive term indicated pursuant to the Operating Regulations.

37. Security Interest. This Agreement will constitute a security agreement under the various Provincial and Territorial Personal Property Security Acts (collectively the "*PPSA*") and a hypothec under the Civil Code of Quebec ("*CCQ*" and together with the *PPSA* the "*Security Acts*"). To secure all of Merchant's obligations under this Agreement, Merchant grants to Processor a security interest in all accounts owned or controlled by Processor at Member Bank that are funded with settlement amounts, including the Reserve Account, and the proceeds thereof (collectively, the "Secured Assets") and Merchant hypothecates the Secured Assets to and in favor of Processor to the extent necessary, in Processor's commercially reasonable judgment, to secure all of Merchant's obligations under this Agreement (the "*Hypothec*"). The Hypothec created hereby is a continuous security, for not less than the value of six (6) month's worth of Card transactions, which will subsist notwithstanding any fluctuation of the amounts hereby secured. Merchant shall be deemed to obligate itself again as provided in Article 2797 of the CCQ with respect to any future obligation hereby secured. With respect to such security interest, liens and the Hypothec, Processor will have all rights afforded under the Security Acts, any other applicable law, and in equity. In addition to the security interest and the Hypothec in the Secured Assets, Processor shall have a contractual right of setoff against the Secured Assets.

Every such right of setoff shall be deemed to have been exercised immediately upon the occurrence of an Event of Default hereunder without any action by Processor or notation in the Processor's records, although Processor may enter such set off on its books and records at a later time. Merchant warrants and represents that no other person or entity has a security interest or a hypothec in the Secured Assets. If a bankruptcy proceeding is filed by or against Merchant under any bankruptcy or insolvency laws (whether the petition is filed voluntarily and/or involuntarily), it waives any applicable protection related to the automatic stay provisions of Section 69.3 of the Bankruptcy and Insolvency Act (or any replacement section), Section 11.02 of the

Companies' Creditors Arrangement Act (or any replacement section), or any similar type of provision under any bankruptcy or insolvency laws, and consents to an appropriate reserve of funds being established between the parties pursuant to this Agreement or by Court Order. Without limitation, this provision shall survive termination of this Agreement.

38. Modification of Agreement. Except as provided in this Agreement, this Agreement including any addendum or schedule or exhibit hereto shall only be modified or amended by an instrument in writing signed by Merchant and Processor. Any changes, additions, stipulations or deletions, including lining out, by Merchant, except where indicated by a space to be filled in (e.g., the space for Merchant's name and address), shall not be deemed to be agreed to or binding upon Processor unless agreed to in writing in the form of an amendment signed by each party hereto. Merchant agrees that Processor may amend this Agreement upon notice to Merchant, including if such amendment is a requirement of applicable law or an Association. Merchant further acknowledges and agrees that some products and/or Services may not be available in all jurisdictions or in all circumstances.

39. Headings and Construction. The headings used in this Agreement are inserted for convenience only and will not affect the interpretation of any provision. Merchant and Processor each acknowledge that the limitations and exclusions contained in this Agreement have been the subject of active and complete negotiation between the parties and represent the parties' voluntary agreement. The parties agree that the terms and conditions of this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professional advisors participated in the preparation of this document. No person or entity may be deemed a third party beneficiary of this Agreement. Merchant acknowledges and agrees that certain Rules govern the relationships between various parties such as the Card Associations, Processor, Member Bank, and/or other entities (e.g., partners, etc.), and that any failures by Processor to abide by such Rules does not provide the basis for a breach of the Agreement claim by Merchant or any other third party. Nothing in the Merchant Agreement shall be deemed to create a partnership, joint venture or any agency relationship between the parties. The parties hereby acknowledge that they have required these agreements and all related documents to be drawn up in the English language. *Les parties reconnaissent avoir demandé que le présent contrat ainsi que les documents qui s'y rattachent soient rédigés en langue anglaise.*

40. Complaints. Any complaints with respect to Processor may be directed to Worldpay Canada Corporation, 5000 Yonge Street, Suite #900, Toronto, Ontario M2N 0A7, Canada, Attention: General Counsel/Legal Department or by phone to 1-800-548-5326; If Merchant has a complaint regarding Processor compliance with the Code of Conduct, Merchant may submit a Code of Conduct complaint form available at <https://info.worldpay.com/en/merchant-solutions-worldpay/complaints>. Processor will respond to all Code of Conduct complaints in accordance with their Code of Conduct complaint

procedures (also available at the above link) a summary of which Processor has provided to Merchant. If Merchant has a non-Code of Conduct complaint in respect of the Services, Merchant should contact the representative at Processor who Merchant regularly deals with to discuss the complaint. If that person is unable to resolve the matter to Merchant's satisfaction, ask to speak with the manager or team leader of the business area. Any non-Code of Conduct complaint not resolved using the above process should be forwarded to the Legal Department of Processor at the address provided in the "Notices" Section above. If the non-Code of Conduct complaint remains unresolved, and it relates to Member Bank, Merchant has the right to refer it to the Ombudsman

for Banking Services and Investments, a third party dispute resolution agency at the address below:

Ombudsman for Banking Services and Investments
20 Queen Street West, Suite 2400
P.O. Box 8
Toronto, Ontario M5H 3R3 Canada
ombudsman@obsi.ca

Pursuant to the Trust and Loan Companies Act (Canada), if you have a complaint in respect of Processor relating to a deposit account, the complaint may be communicated in writing to:

Financial Consumer Agency of Canada
6th Floor, Enterprise Building
427 Laurier Ave. West
Ottawa, Ontario K1R 1B9 Canada
or through its website at fcac-acfc.gc.ca

41. Authorization. Each of the parties hereto represents and warrants on behalf of itself that it has full power and authority to enter into this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate, limited liability company or partnership or other appropriate authorizing actions; that the execution, delivery and performance of this Agreement will not contravene any applicable by-law, corporate charter, operating agreement, partnership or joint venture agreement, law, regulation, order or judgment; that execution, delivery and performance of this Agreement will not contravene any provision or constitute a default under any other agreement, license or contract which such party is bound; and, that this Agreement is valid and enforceable in accordance with its terms.

42. Counterparts. This Agreement may be executed and delivered in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

43. Facsimile and Electronic Signatures. Merchant and Processor agree that electronic signatures will have the same legal effect as original (i.e. ink) signatures and that an electronic, scanned, facsimile, or duplicate copy of any signatures will be deemed an original may be used as evidence of execution.

44. Member Bank. The Processor and Member Bank may jointly or individually assert or exercise any rights or remedies provided to Processor and/or Member Bank hereunder. Merchant shall perform hereunder such that its obligations to Processor accrue for the benefit of Member Bank as well. Processor and Member Bank reserve the right to allocate the duties and obligations assigned hereunder to Processor between themselves, as they deem appropriate in their sole discretion. Additionally, Processor may perform some or all of the Services through one or more of its affiliates in its sole discretion. Member Bank has certain obligations to Merchant pursuant to the Operating Regulations. In the event of any conflict between this Agreement and the Operating Regulations on the subject of a Member Bank's obligations, the Operating Regulations shall control. Processor is party to an agreement with Member Bank and under such agreement is authorized to provide the services described herein. With respect to Interac and Discover transactions processed under this Agreement, Member Bank shall have no liability. This Agreement shall not serve to amend any other agreement in effect between Processor and Member Bank. This Agreement shall be deemed accepted by Member Bank as of the date the first transaction is acquired under this Agreement. As of the commencement of this Agreement, Member Bank in respect of Visa and MasterCard shall be Peoples Trust Company, located in Vancouver, British Columbia. The Member Bank may delegate certain or all of its duties to an affiliate of the Member Bank at any time, without notice to Merchant. The Member Bank may be changed, and its rights and obligations assigned to another party by Processor at any time without notice to Merchant. Without limitation, this provision shall survive termination of this Agreement.

45. Wireless Service Acknowledgement. Processor is not responsible for verifying Merchant's wireless service coverage, or for losses in coverage, or for Merchant's failure to maintain coverage. By

selecting wireless service, Merchant acknowledges that wireless coverage is not guaranteed and that Processor has no control over the wireless service providers or the decisions they make. Additionally, Merchant acknowledges that if wireless service is lost in Merchant's location, the equipment will not operate with another wireless carrier. Processor is not liable if wireless coverage is lost in a specific area and the equipment can no longer be used as a wireless terminal.

46. Encryption. If available and if Merchant's equipment and POS software is compatible, Merchant may use encryption products and services offered by Processor and/or by a third party through Processor ("Encryption Service"). The Encryption Service is designed to encrypt Card data information at the point of sale and decrypt Card data information at the transaction destination. The Encryption Service applies only to transactions sent from the terminal to Processor's authorization and settlement systems pursuant to this Agreement. The service specifically excludes Visa POS Check transactions, gift card transactions, and transactions originated from third party terminal application software. Merchant bears all risk for conducting due diligence regarding the fitness of the Encryption Service for a particular purpose and for determining compliance with the Operating Regulations and applicable laws. Processor makes no representation or warranty that the Encryption Service will prevent breaches of Merchant's terminals, systems, or facilities, or that it will be uninterrupted or error free. Merchant acquires no interest (ownership, intellectual property, or otherwise) in any of the third-party provider software used to provide the Encryption Service. Merchant shall not own, copy, distribute, sub-lease, sub-license, assign, transfer, modify, decompile, or reverse engineer any of Processor's or a third party's services, software, or materials.

47. Equipment/Third Party Services. The following provisions apply if Merchant elects to purchase supplies or purchase, rent, or otherwise use equipment from Processor at any time:

A. Equipment Terms of Use and Sale. As requested by Merchant and upon Processor's approval, Processor may lease, rent, sell or otherwise provide equipment, including imprints, authorization terminals, printers, software, and credit card authenticators ("Equipment") to Merchant in connection with this Agreement. Merchant agrees that Processor may substitute a comparably valued device making up the Equipment in the event the device Merchant selected is out of stock or otherwise not currently available to Processor and/or if Processor reasonably believes that the requested Equipment is not compatible with Merchant's POS software or other equipment. Except as otherwise set forth in Section 47.B below, Merchant acknowledges that Processor provides the Equipment to Merchant on an 'as is' basis, with no representations or warranties. Merchant agrees to release and hold Processor harmless from any claims relating to any breach of manufacturer's or third party's warranties and that Processor is not to be liable to Merchant for any loss, delay, error, interruptions or damage of any kind or character, whether direct, indirect or consequential, resulting from inoperable, defective or otherwise non-working Equipment. Merchant is solely responsible for complying with the Operating Regulations and applicable laws regarding Merchant's use of the Equipment.

B. Equipment Support. Processor agrees to provide limited technical support for installation and operation of the Equipment and to deliver to Merchant any available product warranties provided by the manufacturer of the Equipment or other third party. Processor has no liability or responsibility for fulfilling the terms of the manufacturer's or other third-party warranties, if any. Merchant's sole recourse relating to the manufacturer's or other third-party warranty shall be through the manufacturer or, as applicable, the third party. Processor agrees to assist Merchant in the repair or replacement of the Equipment if necessary, as determined by Processor, and subject to additional charges and/or required documentation. If Processor replaces the Equipment pursuant to the above sentence, Merchant agrees to return the original Equipment, at Merchant's sole cost and expense, within ten (10) calendar days of Merchant's receipt of the replacement Equipment.

C. Use of the Equipment. The operating instructions will instruct Merchant in the proper use of the Equipment, and Merchant shall use

and operate the Equipment only in such manner. Merchant agrees that Merchant will not acquire any title or proprietary right to any Equipment leased, rented, or otherwise provided free of charge by Processor. Merchant will protect all such Equipment from loss, theft, damage or any legal encumbrance and will allow Processor and Processor's designated representatives reasonable access to Merchant's premises for repair, removal, modification, installation and relocation of the Equipment. Processor's suppliers are intended third-party beneficiaries of this Agreement to the extent any terms pertain to Processor's suppliers' ownership rights. Processor's suppliers have the right to rely on and directly enforce the applicable terms of this Agreement against Merchant. Except for Equipment Merchant purchases, Merchant shall not permit the Equipment to be used by any other person or entity or at any address other than Merchant's address set forth in the Merchant Application without Processor's express written consent. With respect to any item of Equipment Processor provides to Merchant, Merchant will not be liable for normal wear and tear, provided, however, that Merchant will be liable to Processor in the event that an item of Equipment is lost, destroyed, stolen or rendered inoperative. Merchant agrees that Merchant's indemnification obligations under this Agreement apply to Merchant's use of the Equipment. Any unused equipment in its original packaging purchased from Processor hereunder may be returned to Processor at Merchant's expense within sixty (60) calendar days of receipt. Merchant shall receive a refund of any money paid, exclusive of shipping charges, in connection therewith subject to a re-stocking fee of an amount equal to twenty percent (20%) of the total purchase price for the returned equipment. No refunds shall be issued for any equipment returned after sixty (60) calendar days.

D. Software. Merchant acknowledges that any Equipment provided under this Agreement is embedded with proprietary technology ("Software"). Merchant shall not obtain title, copyrights or any other proprietary right to any Software. At all times, Processor or Processor's suppliers retain all rights to such Software, including but not limited to updates, enhancements and additions. Merchant shall not disclose such Software to any party, convey, copy, license, sublicense, modify, translate, reverse engineer, decompile, disassemble, tamper with, and/or create any derivative work based on such Software. Merchant's use of such Software shall be limited to that expressly authorized by Processor. In the event the Equipment requires additional Software, Merchant is obligated to cooperate with Processor for the receipt and installation of such Software and/or to participate in a dial in or other down-load procedure.

E. Fees and Discontinued Use of Equipment. Merchant agrees to pay the lease, rental, and other fees and costs set forth in the Application or any order form or amendment or addendum to the Agreement, from the date on which the Equipment is provided to Merchant and continuing thereafter as provided in this Agreement. Furthermore, for any Equipment provided to Merchant not included in the Application, order form, amendment, or addendum, Merchant agrees to pay the suggested retail price or Processor's standard list price for the Equipment as invoiced to Merchant by Processor. If Processor provides Merchant Equipment at no cost, or Merchant rents or leases Equipment from Processor, within fourteen (14) calendar days from the earlier of: (i) the end of the lease or rental term; (ii) upon such time that Merchant discontinues transmitting customer transactions through the Equipment to Processor for a period of thirty (30) calendar days; or (iii) Merchant has not submitted a transaction to Processor within thirty (30) calendar days of the date Processor provides Merchant the Equipment, Merchant agrees to, either: (a) return the Equipment to Processor at Merchant's sole cost and expense, if so instructed by Processor; or (b) otherwise pay the equipment non-return/non-use fee of up to \$999.00 per device unless expressly otherwise agreed in writing. In the event Merchant discontinues transmitting customer transactions through the Equipment to Processor for a period of thirty (30) calendar days within the initial term of the lease or rental, Merchant agrees that the monthly lease or rental fee set forth in the Application shall apply for the remainder of such initial term which monthly lease or rental fee will be accelerated and immediately charged to Merchant.

48. Continuing Unlimited Guaranty. Subject to applicable law, this Section ("Continuing Unlimited Guaranty") applies to each

person who signs this Agreement as a Guarantor (each a "Guarantor"). To induce Processor to enter the Agreement, each Guarantor jointly and severally guarantees the prompt and full payment of all Obligations (defined below) when due.

A. **Obligations.** The word "Obligation" is used in its most comprehensive sense. It includes all indebtedness, debts, and liabilities (including but not limited to, principal, interest, late charges, collection costs, attorneys' fees, and the like) that Merchant owes Processor, whether Merchant created the obligation alone or with others, and whether Merchant is primarily or secondarily responsible. Obligations can be secured or unsecured, absolute or contingent, liquidated or unliquidated, and direct or indirect. Obligations can be evidenced by note, draft, a guaranty agreement, or otherwise. Obligations can exist now or arise in the future. It includes all payment obligations, indemnification obligations, and indebtedness Merchant owes Processor arising from or related to the transactions or Services under this Agreement.

B. **Promise.** Guarantor promises to pay any Obligation that Merchant has not promptly paid when due. Guarantor promises to pay irrespective of Processor's actions or inactions regarding the Obligations, or whether Processor has enforced any security interest created under this Agreement. Guarantor further promises to pay irrespective of the invalidity, insufficiency, or unenforceability of any Obligation. Guarantor's obligations shall not be affected, modified or impaired by any counterclaim, set-off, deduction or defense based upon any claim the Guarantor may have against Merchant or Processor, except payment or performance of the Obligations.

C. **Notice, Changes, Defenses, Setoff and Security Interest.** Guarantor waives notice of any acceptances of this Continuing Unlimited Guaranty. Guarantor waives presentment, demand, protest, notice of protest, and notice of dishonor or other nonpayment of any Obligations. Further, Guarantor waives notice of sale or other disposition of any collateral or security we now hold or later acquire. The duties of Guarantor shall not be released, discharged, or modified by: (i) Processor extending the time for payment (for Merchant or Guarantor); or (ii) Processor delay or omissions in exercising any rights, taking any actions, or pursuing any remedies against Merchant or Guarantor. Guarantor agrees that Processor may release or modify any collateral, security, or other guaranties without notice or consent from Guarantor and without modifying Guarantor's duties to Processor. This is a guaranty of payment and not of collection. Processor has no obligation to demand or pursue any rights against Merchant, anyone else (including another Guarantor), or to exhaust any rights or remedies related to any collateral, security, or other guaranties before demanding payment from Guarantor. Guarantor waives all defenses based on suretyship or impairment of collateral. Following a default under this Agreement, Processor may apply and/or setoff against amounts due to Processor any deposits, account balances, or other credits of Guarantor in Processor's possession. Guarantor grants Processor a security interest in the items just described.

D. **Joint and Several Liability, Successor and Assigns, Other Terms.** The obligations of any Guarantor shall be joint and several with Merchant and any other Guarantor(s) under this Agreement. The property described in any collateral security documents Guarantor provides, whether previously, contemporaneously, or in the future, secures this Continuing Unlimited Guaranty. This Continuing Unlimited Guaranty shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, transferees and assignees. Other terms and conditions applicable to this Continuing Unlimited Guaranty can be found in Section 23, Choice of Law; Jurisdiction; Venue.

49. **Special Association Considerations.** There are a few special rules regarding Merchant's participation in the Discover and American Express Card programs.

A. **Discover.** Processor has no liability for not processing or settling a retained Discover merchant's Discover Cards (as defined by Discover).

B. **American Express.** The following terms apply only to Merchant's American Express Program (see the American Express Merchant Operating Guide, which can be located at <http://www.americanexpress.ca/merchantguide> for capitalized terms).

- i. **Exchange of Information.** Merchant authorizes Processor to exchange transaction and settlement information with American Express on Merchant's behalf.
- ii. **American Express Program Terms.** Merchant agrees to comply with the American Express Program terms provided in the Rules Summary, and the American Express Merchant Operating Guide.
- iii. **Disclosure and Use of Information.** Processor may disclose Transaction Data, Merchant Data, and other information about Merchant to American Express. American Express may use the disclosed information for any lawful business purpose.
- iv. **Direct Card Acceptance.** In the event Merchant Charge Volume exceeds (1) \$1,000,000 in a rolling twelve month period, or (2) \$100,000 in any three consecutive months ("High CV Merchant"), American Express may convert Merchant to a direct Card acceptance relationship. Upon conversion, Merchant will be bound by American Express' then-current Card Acceptance Agreement and corresponding pricing and fees.
- v. **Bona Fide Sales, Encumbrances, Assignment.** Merchant shall only sell *bona fide* goods and services at its establishment(s). Merchant Card transactions shall be free of liens, claims, and encumbrances, other than ordinary Card tax. Additionally, Merchant shall not assign any payments it is due under the Agreement to a third party. However, Merchant may sell and assign future transaction receivables to Processor or Processor's affiliated entities and/or any other cash advance funding source Processor (or its affiliates) partner with.
- vi. **Third Party Beneficiary.** This Agreement confers third party beneficiary rights in American Express for enforcing terms against Merchant. It imposes no obligations on American Express.
- vii. **Opting Out.** Merchant may opt out of accepting American Express Cards in writing without affecting Merchant's rights to accept other payment products.
- viii. **Termination.** Processor may terminate Merchant's right to accept American Express Cards if: (i) Merchant breaches the Agreement; (ii) American Express instructs Processor to do so; or (iii) Merchant engages in fraudulent or any other activity justifying termination.
- ix. **Right to Bill and Collect Chargebacks.** Merchant may not bill or collect from any American Express cardholder for any purchase or payment on the Card unless chargeback has been exercised, Merchant has fully paid for the charge, and Merchant otherwise have the right to do so.
- x. **Removal of Licensed Marks.** Merchant agrees to remove any American Express Licensed Marks from its website or any other location when its participation in the Program ends.
- xi. **Refund Policies.** Merchant agrees that its refund policies for purchases on the Card must be at least as favourable as its refund policy for purchase on any other payment product and the refund policy be disclosed to Card Members at the time of purchase and in compliance with applicable law.
- xii. **Participation under American Express Program or EA Program.** If Merchant does not participate in the American Express Program or EA Program, Processor will have no liability for not processing or settling Merchant's American Express transactions. Further, American Express cards will not be included in the definition of Cards.